



DAVID CHIU  
City Attorney

STEPHANIE STUART  
Deputy City Attorney

Direct Dial: (415) 554-3947  
Email: stephanie.stuart@sfcityatty.org

## MEMORANDUM

TO: Honorable Members, SFMTA Board of Directors  
Honorable Members, Board of Appeals  
Jeffrey Tumlin  
Director of Transportation  
Julie Rosenberg  
Executive Director, Board of Appeals

FROM: Stephanie Stuart Bethune, Deputy City Attorney *SB*  
Bradley Russi, Deputy City Attorney *BR*

DATE: August 24, 2022

RE: Jurisdiction Over Appeals of Taxi Permitting Decisions

### Summary

The San Francisco Municipal Transportation Agency (SFMTA) Director of Transportation has asked whether SFMTA decisions regarding taxi permits are appealable to the Board of Appeals and specifically whether the SFMTA could rescind its voluntary agreement with the Board of Appeals. The SFMTA's inquiry relates only to future appeals of taxi permitting decisions; any decision to rescind the informal arrangement with the Board of Appeals would not impact appeals pending before the Board of Appeals. Until 2007, the Board of Appeals had jurisdiction under the City Charter to hear appeals of taxi permitting decisions made by the SFMTA's predecessor agencies. The passage of Proposition A in 2007 granted the SFMTA exclusive authority over the regulation of taxis. After the passage of Proposition A, our Office advised that the measure gave the SFMTA the power to prescribe the procedure for appealing taxi permit decisions, and therefore supplanted the Board of Appeals' jurisdiction over such appeals unless the SFMTA agrees to such review. Consistent with this advice, since 2013, the SFMTA has agreed to allow the Board of Appeals to continue to hear appeals of taxi permitting decisions. That agreement has taken the form of an informal arrangement. In this memorandum we confirm our prior advice and affirm that the SFMTA, in its discretion, may terminate the informal arrangement with the Board of Appeals regarding taxi permitting decisions, though if it were to do so we recommend that the SFMTA consult with the Board of Appeals in advance to provide for a smooth and transparent transition.

### Discussion

#### I. Charter Authority of the Board of Appeals

Section 4.106(b) of the San Francisco Charter confers jurisdiction on the Board of Appeals to hear appeals of many City permitting decisions, including the authority to hear an appeal from any person who "has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn . . . or who believes his or her interest or the public interest will be adversely affected by the grant, denial, suspension, or revocation of a license or permit . . . ." Before the amendments to the Charter discussed below, Charter Section 4.106 (b) gave aggrieved taxi applicants and permit holders whose permits had been suspended or revoked the right to appeal the decision to the Board of Appeals.

## MEMORANDUM

TO: SFMTA & Board of Appeals  
DATE: August 24, 2022  
PAGE: 2  
RE: Jurisdiction Over Appeals of Taxi Permitting Decisions

---

**II. SFMTA Charter Authority.**

The SFMTA was created in 1999 after the voters adopted Proposition E, which added Article 8A to the Charter. Proposition E combined the functions of the Municipal Railway and the Department of Parking and Traffic into a single agency. Proposition E also gave the SFMTA certain powers and duties that other City departments had previously held. For example, Proposition E gave the SFMTA exclusive authority to set fares for Muni and exclusive authority over the construction and management of all SFMTA property and financial assets. Charter §8A.102(b), §8A.106. Also, because taxis function in the City's overall transportation system, Proposition E also gave the Board of Supervisors the power "to abolish the Taxi Commission . . . and to transfer the powers and duties of that commission to the SFMTA's Board of Directors." Charter §8A.101(e).

In November 2007, the voters enacted Proposition A, which amended SFMTA's Charter authority by providing greater clarity regarding the SFMTA's exclusive jurisdiction over parking and traffic matters. Proposition A also clarified and broadened the scope and effect of the Board of Supervisors' power to transfer taxi functions to the SFMTA. Specifically, Proposition A amended the relevant Charter section to read as follows:

The Board of Supervisors shall have the power, by ordinance, to abolish the Taxi Commission created in Section 4.133, and to transfer the powers and duties of that commission to the Agency under the direction of the Director of Transportation or his or her designee. In order to fully integrate taxi-related functions into the Agency should such a transfer occur, *the Agency shall have the same exclusive authority over taxi-related functions and taxi-related fares, fees, charges, budgets, and personnel that it has over the Municipal Railway and parking and traffic fares, fees, charges, budgets, and personnel. Once adopted, Agency regulations shall thereafter supercede all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.* Section 8A.101(b). (Emphasis added.)

In 2008 the Board of Supervisors adopted Ordinance No. 308-08, abolishing the Taxi Commission. Under its Charter authority, in February 2009 the SFMTA Board of Directors adopted Article 1100 of the Transportation Code, establishing a comprehensive regulatory scheme for the taxi industry. In addition to setting eligibility requirements for all taxi-related permits, Article 1100 also prescribes the procedures and sets the standards for the issuance, renewal, denial, suspension, and revocation of taxi permits and provides a hearing process for permit holders charged with misconduct or noncompliance with the various requirements applicable to permittees.

Under Article 1100, a permit holder or applicant who receives a citation or notice of denial, nonrenewal, or summary suspension of their permit may appeal that decision by requesting a hearing. The SFMTA's Hearing Section conducts these hearings. In 2013, the SFMTA and the Board of Appeals negotiated a Memorandum of Understanding (MOU) intended to memorialize the SFMTA's consent to the Board of Appeals' exercise of jurisdiction over appeals from taxi permit decisions issued by the SFMTA's Hearing Section. But the parties did not execute the MOU and instead, the SFMTA and Board of Appeals developed an informal arrangement that allowed the Board of Appeals to continue hearing appeals of taxi permit

## MEMORANDUM

TO: SFMTA & Board of Appeals  
DATE: August 24, 2022  
PAGE: 3  
RE: Jurisdiction Over Appeals of Taxi Permitting Decisions

---

decisions. Under the current practice that the SFMTA has agreed to, an aggrieved permittee may appeal the SFMTA Hearing Section's decision to the Board of Appeals.

**III. The SFMTA's exclusive jurisdiction over taxi matters supplants the Board of Appeals' authority to hear appeals, so the Board of Appeals may decide these appeals only if the SFMTA consents.**

The Board of Supervisors' abolition of the Taxi Commission and transfer of its functions to the SFMTA had two legal consequences. One, the SFMTA – not the Board of Supervisors or Board of Appeals – has exclusive authority over taxi-related functions, to the same extent that it does over many Municipal Railway functions. In other words, as to taxi permits, Ordinance No. 308-08 transferred the police power that had been exercised previously by the Board of Supervisors, the administrative authority of the Taxi Commission, and the appellate authority of the Board of Appeals to the SFMTA. Two, once the SFMTA adopted regulations over taxi matters, including the process for appealing certain permit decisions, unless SFMTA agrees otherwise, those regulations override any conflicting provisions of City law, including the Board of Appeals' appellate authority over permits in Charter Section 4.106.

The SFMTA's exclusive jurisdiction over taxi regulation supplanted the Board of Appeals' jurisdiction over taxi-related permit decisions, because Charter Section 8A.101(b) and Article 1100 of the Transportation Code superseded Charter Section 4.106(b). Therefore, just as the SFMTA agreed to delegate its authority and allow the Board of Appeals to hear appeals of taxi permit decisions, the SFMTA may decide, in its discretion, to discontinue that practice, thereby terminating the Board of Appeals' ability to hear appeals related to taxi permitting decisions. Notwithstanding a decision to terminate the Board of Appeals' ability to hear appeals of taxi permit decisions, an aggrieved taxi permit applicant or permit holder will still have an opportunity to appeal an adverse permit decision. Under Article 1100, when the SFMTA denies an application for a taxi permit or suspends or revokes an existing permit, the applicant or permit holder is afforded a full evidentiary hearing before an SFMTA Hearing Officer. If the SFMTA opts to rescind its informal arrangement with the Board of Appeals regarding its exercise of jurisdiction over appeals from taxi decisions, we recommend that the SFMTA Board of Directors consider any amendments to Article 1100 of the Transportation Code necessary to effectuate such change.

### Conclusion

Based on the analysis above, the Charter provides the SFMTA exclusive jurisdiction over taxi matters, including appeals, and exempts taxi permit decisions from a mandatory appeal to the Board of Appeals under Charter Section 4.106. Thus, the SFMTA may discontinue the practice of allowing the Board of Appeals to hear appeals related to the grant, denial, suspension, or revocation of taxi permits. If the SFMTA elects to terminate its informal arrangement with the Board of Appeals, we recommend that it do so after consulting with the Board of Appeals for the benefit of the public and to facilitate a smooth transition and also that the SFMTA Board of Directors consider any necessary amendments to Article 1100 of the Transportation Code.

# Memorandum

## Taxi Permit Appeals at the Board of Appeals



TO: Julie Rosenberg  
Executive Director, Board of Appeals

FROM: Jeffrey Tumlin   
Director of Transportation, SFMTA

CC: SFMTA Board of Directors

DATE: September 8, 2022

SUBJECT: Taxi Permit Appeals at the Board of Appeals

---

Per the consultation between you and the SFMTA's Director of Taxis, Access and Mobility Services, this memorandum provides written confirmation that the SFMTA will discontinue the informal practice of allowing the Board of Appeals to hear appeals related to taxi permit decisions as of September 8, 2022. As discussed, and mutually agreed, the SFMTA's decision to terminate its informal arrangement with the Board of Appeals does not apply to any taxi permit appeal currently pending before the Board of Appeals. Notwithstanding the end of the informal relationship between the SFMTA and the Board of Appeals, an aggrieved applicant or permittee will still have the ability to appeal an adverse permit decision to a neutral hearing officer as set forth in Article 1100 of the Transportation Code.

If you have any questions about this matter please contact Kate Toran, Director of Taxis, Access & Mobility Services.

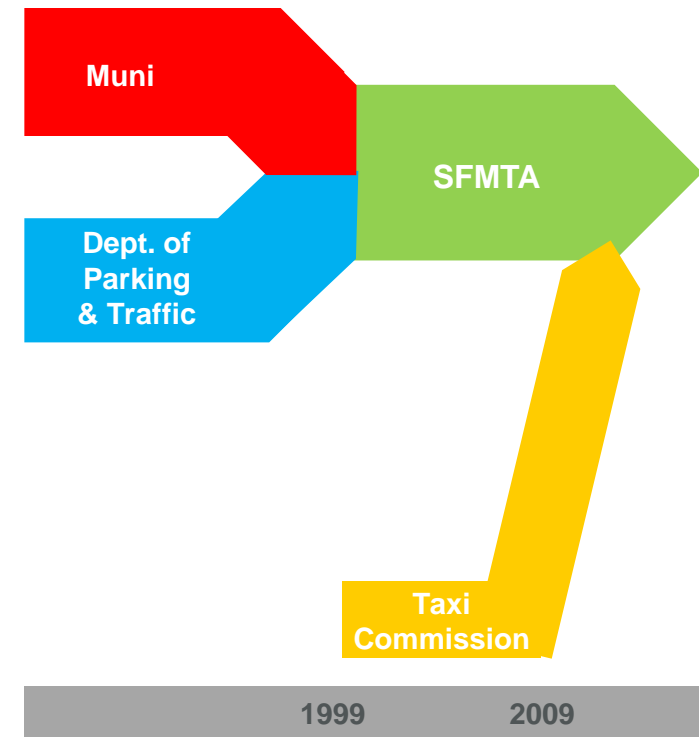
Thank you.



San Francisco Board of Appeals  
November 16, 2022  
Kate Toran, Director of Taxis, Access & Mobility Services

# Board of Appeals History

- ❖ Until 2007, the Board of Appeals had jurisdiction under the City Charter to hear appeals of taxi permitting decisions
- ❖ Proposition A passed in 2007 and granted the SFMTA exclusive authority over the regulation of taxis
- ❖ The Board of Supervisors adopted Ordinance No. 308-08, abolishing the Taxi Commission in 2008
- ❖ Taxis joined the SFMTA in 2009, operating under the regulatory framework established by the SFMTA Board: Article 1100 of the Transportation Code
- ❖ Article 1100 sets standards for taxi permit issuance and provides a structured hearing process for permit holders & applicants





# Board of Appeals History, continued

- ❖ In 2013, the SFMTA and the Board of Appeals negotiated a Memorandum of Understanding (MOU) intended to memorialize the SFMTA's consent to the Board of Appeals' exercise of jurisdiction over appeals from taxi permit decisions issued by the SFMTA's Hearing Section.
- ❖ The **MOU was never executed**, instead the SFMTA and Board of Appeals developed an **informal arrangement** that allowed the Board of Appeals to continue hearing appeals of taxi permit decisions
- ❖ The Board of Appeals website states: *"S.F. Charter Article VIII A grants SFMTA exclusive authority over matters within its jurisdiction. Therefore, appeals of SFMTA decisions may be heard by the Board only with the consent of SFMTA and upon acceptance of the appeal by the Board."*

# Permit Harmonization: Appeals Process

- ❖ In 2019, SFMTA staff began a Permit Harmonization process to align the various permit processes
- ❖ Staff identified the need for a consistent regulatory framework that streamlines SFMTA's permit programs, including application and appeals processes
- ❖ Appeals for taxi permit decisions have been misaligned with all other SFMTA appeals because of the duplicative, two-step process:
  1. SFMTA Hearing
  2. Board of Appeals Hearing



# Taxi Appeals Process

- ❖ SFMTA conferred with the Board of Appeals Executive Director regarding the discontinuation of the informal practice of allowing taxi permit decisions to be appealed to the Board of Appeals
- ❖ To align the taxi appeals process with other appeals at SFMTA, the Director of Transportation then discontinued the informal practice of allowing taxi permit decisions to be appealed to the Board of Appeals in September 2022, while allowing for the completion of pending appeals
- ❖ Taxi permit **decisions remain appealable** to the SFMTA Hearing Section

# Questions



# PUBLIC COMMENT

**From:** [epoquez@aol.com](mailto:epoquez@aol.com)  
**To:** [BoardofAppeals \(PAB\)](#)  
**Subject:** Fwd: NOV 16 TAXI PERMIT RELATED ITEMS  
**Date:** Wednesday, November 9, 2022 11:00:11 AM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Commissioners,

From the May 11 BOA hearing minutes on the appeals by Mr. Horbal and Mr. Cortesos:

**"ACTION:** *Upon motion by Commissioner Chang, the Board voted 3-1 (Vice President Lazarus dissented) to continue this matter to November 16, 2022, on the basis there could be a change in conditions that would affect the value of the medallion. More specifically, there could be a change in legislation, policy or collaboration between taxis and ride sharing services, which might add value to the medallion."*

The long-anticipated Pilot Program in which San Francisco taxi drivers will have access to Uber's massive customer base has run into delays but is expected to begin this month.

At a minimum, there should be a further continuance on the basis stated above.

Your overturning the medallion revocations seems even more appropriate. The revocations are predicated upon the fact that disabled (Proposition K of 1978) medallion holders must have a current California Driver's License for annual renewal. There is no logical reason why a disabled career driver who also holds a taxi medallion cannot continue serving the public by operating that business permit (medallion) — generally done jointly with a licensed taxi company. The SFMTA knows that many of these affected career workers are not able to obtain a CDL because of their disability. The CDL rule, contrived in year 2016, specifically targets disabled career driver-medallion holders, thereby violating the AMERICANS WITH DISABILITY ACT OF 1990.

The Agency's plan to confiscate these permits is not only cruel and discriminatory, but also brazenly defies the law.

Another snapshot of similar deceptions by SFMTA is their recent attempt to eliminate our appeals right to your Board of Appeals office, which allows taxi permit holders to appeal adverse actions for an independent, neutral BOA review. In a recent SFMTA meeting where they requested the Board to increase taxi fares, they surreptitiously inserted the termination of our appeal rights under the guise of cleaning up the Transportation Code. When Taxi services staff was probed by Director Heminger why the Agency acted without the Board's approval, their response was because staff has to duplicate efforts every time they defend their position in BOA hearings. Your office is the only venue the medallion holders have in their fight to keep their livelihood and retirement income. It is outrageous that SFMTA callously considers it a waste of their time. Director Heminger, with unanimous Board support, moved to sever the BOA appeal issue and thereby disallowed the attempt of the Transportation Director and his staff to eliminate the Board of Appeals right.

As an owner and operator of a taxi company in San Francisco for the past 35 years, I urge you to put a stop to the current unjustifiable attempt by SFMTA to harvest the permits earned through a career of arduous and dangerous labor by taxi permit holders who are now either severely disabled or too elderly to qualify for a CDL.

And just as importantly, please consider my urgent request for the BOA to preserve our appeal rights.

Evelyn A Poquez  
Alliance Cab  
President and General Manager

**From:** [Dan Hinds](#)  
**To:** [Longaway, Alec \(BOA\)](#)  
**Subject:** Pursuit of elderly and disabled taxi medallions  
**Date:** Wednesday, November 9, 2022 5:00:31 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

## Pursuit of elderly and disabled taxi medallions

In 2016, the SFMTA initiated a policy to actively repossess taxi medallions from the elderly and disabled. Probably fearing a backlash from the public, the SFMTA cited medallion holders who did not have a current California drivers license or A-card (certification to drive a taxicab) knowing yet hiding the fact that these people were overwhelmingly elderly and disabled.

To effect this policy they encountered three hurdles:

1. The hearing officers initially refused to endorse taking medallions away from career drivers who were unable to fulfill the driving requirement through no fault of their own. The SFMTA's solution was to instruct the hearing officers that they had to rule in their favor.\* (see attachment)
2. The medallion surrender program crafted by the SFMTA, drivers, medallion holders, and companies was in part designed to provide limited protection for disabled medallion holders and a financially viable exit for those wishing to cease driving. This program specifically addressed the industry-supported Slone lawsuit appeal then pending before the federal appeals court and resulted in a federal appeals court approved settlement. Even though no medallion transfers under the program had taken place for years, the city has refused to dismantle the program. Instead they seek to mischaracterize both the Slone lawsuit and the program itself.\*\* (attached is a written version of my remarks at a prior appeal hearing)
3. The final hurdle is the Board of Appeals itself. Perhaps sensing reluctance on the part of the Board of Appeals to approving taking medallions away from the elderly and infirm, the SFMTA is now attempting to decouple taxi medallion permits from the appeal process and make the Board of Appeals irrelevant.\*\*\* (see attached)

Several members of the Board are newly appointed, and taxi medallions revocations have a complex history. The history is important.  
I hope this email is helpful in understanding it.

Sent from my iPhone

Language added to the "Administrative Hearings" portion of the Transportation Code {i.e., sec. 1120(e)(1)} around October 2021 after SFMTA Hearing Officers had ruled in favor of taxi permit holder appellants in five separate cases:

*"The Notice of Decision shall be based solely upon the criteria set forth in this Article 1100, include findings, and shall set forth evidence in support of each finding. The Hearing Officer's Notice of Decision may only uphold or overturn the action sought by the SFMTA and shall not set conditions, establish special circumstances, establish special remedies or impose other directives. The Hearing Officer's authority is limited to the regulations established in Article 1100."*



Can't see the images? [View As Webpage](#)



# Update

Dear San Francisco Taxi Industry Member:

Please be advised that SFMTA has discontinued the informal practice of allowing the Board of Appeals to hear appeals related to taxi permit decisions. The SFMTA's decision to terminate its informal arrangement with the Board of Appeals does not apply to any taxi permit appeal currently pending before the Board of Appeals.

Going forward, an aggrieved applicant or permittee will still have the ability to appeal an adverse permit decision to a neutral hearing officer as set forth in Article 1100 of the Transportation Code.

If you have any questions, please contact [SFTaxi@sfmta.com](mailto:SFTaxi@sfmta.com)

**SFMTA.com**



☎ 311 (Outside SF 415.701.2311; TTY 415.701.2323) Free language assistance / 免費語言協助 / Ayuda gratis con el idioma / Бесплатная помощь переводчиков / Trợ giúp Thông dịch Miễn phí / Assistance linguistique gratuite / 無料の言語支援 / 무료 언어 지원 / Libreng tulong para sa wikang Filipino / การช่วยเหลือทางด้านภาษาโดยไม่เสียค่าใช้จ่าย / خط المساعدة المجاني على الرقم

This email was sent by:

**San Francisco Municipal Transportation Agency**  
1 S Van Ness Ave San Francisco, CA, 94103, USA

[Update Subscriptions](#) | [Contact Us](#)

**From:** [Charles Rathbone](#)  
**To:** [Longaway, Alec \(BOA\)](#)  
**Subject:** Taxi permit appeal rights  
**Date:** Thursday, November 10, 2022 12:21:11 PM  
**Attachments:** [11-15-22\\_mtab\\_item\\_14\\_tc\\_amendment - board\\_of\\_appeals.docx .pdf](#)

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Board of Appeals members,

On Tuesday November 15 Transportation Director Jeff Tumlin and taxi staff will ask the SFMTA Board to amend the Transportation Code in order to remove taxi permittee Board of Appeals due process rights, which have been in place for at least ninety years.

The attached PDF document for SFMTA Board Item 14 asserts that "The Taxi Director consulted with the Director of the Board of Appeals." That occurred without the SFMTA Board approving that our BOA appeal rights no longer exist.

Apparently, the "Director of the Board of Appeals" refers to the Board's Executive Director, rather than a Board member.

I believe that this action by SFMTA is a heavy-handed attempt to preclude your own consideration of taxi appeal rights. Please proceed to give this matter your unbiased attention.

--

Charles Rathbone  
Tel: 415-500-2431  
[charles.rathbone@sonic.net](mailto:charles.rathbone@sonic.net)

**THIS PRINT COVERS CALENDAR ITEM NO.: 14**

**SAN FRANCISCO**

**MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Taxis, Access & Mobility Services Division

**BRIEF DESCRIPTION:**

Amending Transportation Code, Division II, Article 1100, Sections 1119 - 1121 to remove inapplicable references to the Board of Appeals.

**SUMMARY:**

- SFMTA has discontinued its informal practice of allowing taxi permit appeals to be heard by the Board of Appeals. This process is duplicative of the due process hearing requirements established in Sections 1120 and 1121 administered by the SFMTA Hearing Section. Therefore, staff is proposing to remove inapplicable references to the Board of Appeals and clarify that a decision by the Hearing Officer is the final administrative decision.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Proposed Transportation Code Amendment

**APPROVALS:**

**DATE**

DIRECTOR



November 9, 2022

SECRETARY



November 9, 2022

**ASSIGNED SFMTAB CALENDAR DATE:** November 15, 2022

## **PAGE 2.**

### **PURPOSE**

Amending Transportation Code, Division II, Article 1100, Sections 1119 - 1121 to remove inapplicable references to the Board of Appeals.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

The item will support the following goals and objectives of the SFMTA Strategic Plan:

Goal 5. Deliver reliable and equitable transportation services

Goal 9: Fix things before they break, and modernize systems and infrastructure

This item will support the following Transit First Policy Principles:

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

### **DESCRIPTION**

The Taxis, Access & Mobility Services Division of the San Francisco Municipal Transportation Agency (SFMTA) is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance, and administering discipline for regulatory violations.

As part of that mandate, SFMTA's Taxis, Access & Mobility Services Division strives to ensure that San Francisco taxicab industry remains a safe and reliable transportation choice. This includes proposing amendments to the Transportation Code for SFMTA Board consideration. This legislation is part of an ongoing effort to update taxicab rules.

### **BACKGROUND**

The SFMTA was created in 1999 after the voters adopted Proposition E. Proposition E combined the functions of the Municipal Railway and the Department of Parking and Traffic into a single agency and also gave the SFMTA certain powers and duties previously held by other City departments. Because taxis function in the City's overall transportation system, Proposition E also gave the Board of Supervisors the power "to abolish the Taxi Commission . . . and to transfer the powers and duties of that commission to the SFMTA's Board of Directors." Charter §8A.101(e).

In November 2007, the voters enacted Proposition A, which amended SFMTA's Charter authority by broadening the scope and effect of the Board of Supervisors' power to transfer taxi functions to the SFMTA. Specifically, Proposition A amended the Charter to grant the SFMTA "the same exclusive authority over taxi-related functions and taxi-related fares, fees, charges, budgets, and personnel that it has over the Municipal Railway and parking and traffic fares, fees, charges, budgets, and personnel. Once adopted, Agency regulations shall thereafter supersede all

### **PAGE 3.**

previously adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.” Section 8A.101(b).

In 2008 the Board of Supervisors adopted Ordinance No. 308-08, abolishing the Taxi Commission. Under its Charter authority, in February 2009 the SFMTA Board of Directors adopted Article 1100 of the Transportation Code, establishing a comprehensive regulatory scheme for the taxi industry. In addition to setting eligibility requirements for all taxi-related permits, Article 1100 also prescribes the procedures and sets the standards for the issuance, renewal, denial, suspension, and revocation of taxi permits and provides a hearing process for permit holders charged with misconduct or noncompliance with the various requirements applicable to permittees.

Under Article 1100, a permit holder or applicant who receives a citation or notice of denial, nonrenewal, or summary suspension of their permit may appeal that decision by requesting a hearing. The SFMTA’s Hearing Section conducts these hearings.

The Hearing Section process is quasi-judicial, and there is an ethical wall between all SFMTA divisions and the Hearing Section. The Hearing Section has clear policies that disallow staff from discussing hearings with the Hearing Section.

With the passage of Proposition A, the Board of Appeals no longer had jurisdiction to hear taxi-related appeals, although the SFMTA maintained this legacy appeal process during the initial transition period when the regulatory authority of taxis came under the SFMTA. In 2013, the SFMTA and the Board of Appeals considered establishing a Memorandum of Understanding (MOU) to formalize the SFMTA’s consent to the Board of Appeals’ exercise of jurisdiction over appeals from taxi permit decisions issued by the SFMTA’s Hearing Section. But the parties did not execute the MOU and instead, the SFMTA and Board of Appeals developed an informal arrangement that allowed the Board of Appeals to continue hearing appeals of taxi permit decisions. Under the practice that the SFMTA had previously agreed to, an aggrieved permittee was allowed to appeal the SFMTA Hearing Section’s decision to the Board of Appeals.

#### **Exclusive Jurisdiction**

The Charter provides the SFMTA with exclusive jurisdiction over taxi matters, including appeals. Once the SFMTA adopted regulations over taxi matters, including the process for appealing certain permit decisions, unless SFMTA agrees otherwise, those regulations override any conflicting provisions of City law, including the Board of Appeals’ appellate authority over permits in Charter Section 4.106. This exclusive jurisdiction means that the Board of Appeals may decide taxi appeals only if the SFMTA consents.

After seeking and receiving guidance from the City Attorney’s office regarding the SFMTA’s authority to discontinue the practice of allowing taxi permit decisions to be appealed to the Board of Appeal, the SFMTA Director of Transportation instructed Taxi Services to discontinue the practice. The Taxi Director consulted with the Director of the Board of Appeals, and thereafter, the process of allowing taxi permit appeals to be heard by the Board of Appeals was terminated. The decision to terminate this arrangement with the Board of Appeals does not apply to any taxi permit appeal currently pending before the Board of Appeals, and there are three appeals pending before the Board of Appeals scheduled for November 16, 2022.

### **Rationale for Terminating the Board of Appeals Process**

San Francisco taxi permittees or applicants are afforded due process through the hearing requirements established in Article 1100 of the Transportation Code. Permittees or applicants who receive a citation or notice of denial, nonrenewal, or summary suspension of their permit may appeal that decision by requesting a hearing through the SFMTA's Hearing Section. A hearing is held and a Hearing Officer either upholds or overturns the SFMTA's decision, providing permittees with due process protections. The practice of going to the Board of Appeals adds another hearing, which is duplicative, as the hearings before the Board of Appeals are *de novo*, which means that the hearing starts from the beginning. This results in excessive staff time to prepare for a second hearing on a matter that has already been heard before the Hearing Officer. Board of Appeals decisions are also subject to requests for rehearing, which adds an additional layer of bureaucracy and requires significant staff resources to prepare for.

The Board of Appeals Commissioners are not subject matter experts regarding taxi regulations and generally do not deal with any other issues pertaining to the Transportation Code, particularly Article 1100. SFMTA staff must devote significant time to prepare for and attend hearings before the Board of Appeals, and staff must be prepared to answer a voluminous amount of questions from the Commissioners because of the unique nature of the taxi industry in the Board of Appeals standard appeals portfolio.

Additionally, SFMTA is working to harmonize its permit programs on key regulatory matters, when applicable. Aligning the appeals process to establish standard rules and processes regarding an applicant or permittee's ability to appeal is a key example of this type of permit harmonization, which is a good government measure.

### **Hearings before the Board of Appeals**

In FY2015, the Board of Appeals heard two taxi related matters and upheld the SFMTA's action in both. Both respondents subsequently filed requests for rehearing, and both were denied. In FY2016 and FY2017, the Board of Appeals did not hear any taxi related appeals. One matter was appealed to the Board of Appeals in FY2018, and the SFMTA's action was upheld by default.

A comprehensive permit review and enforcement initiative was undertaken in 2019 and 2020, which resulted in 316 notices of nonrenewal being sent to 257 Medallion holders in September 2020. This enforcement activity generated an increase in the number of appeals both before the SFMTA Hearing Officer and the Board of Appeals.

Of the 316 Medallions impacted, 146 cured their outstanding issues and were promptly renewed. The holders of 121 Medallions did not respond, and the notice of nonrenewal became final. A total of 49 appeals were filed. Of the appeals filed, a total of 17 hearings were heard before a Hearing Officer, 32 resulted in default decisions due to the permit holder's failure to appear.

Of the 17 hearings heard before a Hearing Officer, the SFMTA's action was upheld in 13 hearings, while the Hearing Officer overturned the SFMTA's action in four hearings. A total of eight appeals went to the Board of Appeals, the SFMTA was the appellant in three of the eight. One of the three SFMTA appeals was settled prior to the hearing date, so the hearing did not go

## **PAGE 5.**

forward. SFMTA appeared at the Board of Appeals seven times between October 2021 and May 2022, with three additional hearings scheduled for November 2022. Two appeals have been heard before the Board of Appeals three times, resulting in multiple continuances between November 2021 and May 2022. These two are scheduled to be heard again for the fourth time in November 2022.

### **Proposed Transportation Code Revisions by Section**

#### **Article 1100**

##### **Section 1119. ADMINISTRATIVE FINES ASSESSED AGAINST NON-PERMIT HOLDERS.**

The SFMTA has discontinued its informal practice of allowing taxi permit appeals to be heard by the Board of Appeals. This process is duplicative of the due process hearing requirements established in Sections 1120 and 1121 administered by the SFMTA Hearing Section. The proposed amendment in this section clarifies that the decision by a Hearing Officer is the final administrative decision with respect to administrative hearings conducted pursuant to Sections 1119, 1120 and 1121.

##### **Section 1120. ADMINISTRATIVE HEARINGS.**

Because the SFMTA has discontinued its informal practice of allowing taxi permit appeals to be heard by the Board of Appeals, staff is proposing to delete inapplicable references to the Board of Appeals and to clarify that the decision by a Hearing Officer made under Sections 1119, 1120 and 1121 is the final administrative decision.

##### **Section 1121. SUMMARY SUSPENSION OF PERMIT FOR HEALTH OR SAFETY REASONS.**

Because the SFMTA has discontinued its informal practice of allowing taxi permit appeals to be heard by the Board of Appeals, staff is proposing to delete inapplicable references to the Board of Appeals.

### **STAKEHOLDER ENGAGEMENT**

Staff informed the taxi industry that the SFMTA had discontinued the informal process of allowing taxi permit decisions to be heard by the Board of Appeals via email outreach lists. The standard type of stakeholder engagement was not conducted in this matter, as it was a decision by the Director of Transportation.

### **ALTERNATIVES CONSIDERED**

The decision to end the informal practice of allowing taxi related matters to be heard by the Board of Appeals was made under the authority of the Director of Transportation. Staff considered leaving the informal practice in place, but given the significant amount of staff time spent and the duplicative nature of the process, the practice was discontinued.



**PAGE 6.**

**FUNDING IMPACT**

The proposed code revision has no financial impact on the SFMTA.

**ENVIRONMENTAL REVIEW**

On September 29, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the proposed amendments to Transportation Code, Division II, Article 1100 – Taxi Meter Rates, Gate Fees, and Other Updates, including removing inapplicable references to the Board of Appeals, are not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(s) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this calendar item.

**RECOMMENDATION**

Amending Transportation Code, Division II, Article 1100, Sections 1119 - 1121 to remove inapplicable references to the Board of Appeals.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Charter provides the San Francisco Municipal Transportation Agency (SFMTA) with exclusive jurisdiction over taxi matters, including appeals; and,

WHEREAS, Once the SFMTA adopted regulations over taxi matters, including the process for appealing certain permit decisions, unless SFMTA agrees otherwise, those regulations override any conflicting provisions of City law, including the Board of Appeals' appellate authority over permits in Charter Section 4.106; and,

WHEREAS, San Francisco taxi permittees who receive a notice of denial, nonrenewal, revocation or summary suspension of their permit may appeal that decision by requesting a hearing through the SFMTA's Hearing Section; and,

WHEREAS, SFMTA wants to clarify that the informal practice of allowing taxi related matters to be heard by the Board of Appeals has ended by removing inapplicable references to this practice from the Transportation Code; and,

WHEREAS, On September 29, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the proposed amendment to Transportation Code, Division II, Article 1100 – remove references to the Board of Appeals is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(s) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amend Transportation Code, Division II, Article 1100, Section 1119- 1121.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 15, 2022.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

RESOLUTION NO.

[Transportation Code – Regulation of Motor Vehicles for Hire]

**Resolution amending the Transportation Code to modify the administrative hearing procedures applicable to motor vehicle for hire permits issued under Article 1100.**

NOTE: Additions are single-underline Times New Roman;  
deletions are ~~strike-through Times New Roman~~.

The Municipal Transportation Agency Board of Directors of the City and County of San Francisco enacts the following regulations:

Section 1. Article 1100 of Division II of the Transportation Code is hereby amended by revising Sections 1119 - 1121 to read as follows:

**SEC. 1119. ADMINISTRATIVE FINES ASSESSED AGAINST NON-PERMIT HOLDERS.**

\* \* \* \*

(d) **Right to Judicial Review.** A decision of a Hearing Officer made under ~~this~~ Sections 1119, 1120, or 1121 is a final administrative decision. The person or entity cited may obtain judicial review of the administrative decision by filing a petition for review in accordance with California Code of Civil Procedure Sections 1094.5 and 1094.6.

**SEC. 1120. ADMINISTRATIVE HEARINGS.**

\* \* \* \*

(h) **Settlement.**

(1) After issuance of an SFMTA Complaint, Notice of Nonrenewal, Inactive Status under Section 1103(b)(4), or Summary Suspension, or a Citation issued under Section 1119(a) or for a violation listed under Section 1118(a), the

## RESOLUTION NO.

SFMTA may enter into a settlement with the Respondent or person cited. The parties may reach a settlement before, during, or after the hearing, but may not enter into a settlement after the Hearing Officer issues the Notice of Decision in accordance with subsection (e)(2).

(2) A settlement need not be read into the record of the hearing, or approved by the Hearing Officer, but must be reduced to writing, and signed and dated by the SFMTA and Respondent or Respondent's legal counsel or other authorized representative.

(3) By entering into a settlement agreement, ~~Respondent waives any right to appeal to the City's Board of Appeals, and~~ Respondent waives any right to seek judicial review with respect to the subject of the settlement agreement.

\* \* \* \*

(k) **Right to Judicial Review.** A decision of a ~~H~~Hearing Officer made under Sections 1119, 1120, or 1121 is a final administrative decision. The person or entity cited may obtain judicial review of the administrative decision by filing a petition for review in accordance with California Code of Civil Procedure Sections 1094.5 and 1094.6.

### **SEC. 1121. SUMMARY SUSPENSION OF PERMIT FOR HEALTH OR SAFETY REASONS.**

\* \* \* \*

(c) **Appeal.** If the Permittee ~~appeals a~~ seeks judicial review of the Hearing Officer's decision upholding a summary suspension ~~to the Board of Appeals,~~ the summary suspension shall remain in effect until a final decision is issued by the court ~~Board of Appeals.~~ Where a permit is revoked after a summary suspension, the revocation shall be effective immediately and, if the Permittee seeks judicial review ~~appeals to the Board of Appeals,~~ shall remain in effect until a final decision is issued by the court ~~Board of Appeals.~~

## RESOLUTION NO.

Section 2. Effective Date. This resolution shall become effective 31 days after enactment. Enactment occurs when the San Francisco Municipal Transportation Agency Board of Directors approves this resolution.

Section 3. Scope of Resolution. In enacting this resolution, the San Francisco Municipal Transportation Agency Board of Directors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Transportation Code that are explicitly shown in this resolution as additions or deletions in accordance with the "Note" that appears under the official title of the resolution.

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
STEPHANIE STUART  
Deputy City Attorney

n:\legana\as2022\2300088\01635640.docx

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 15, 2022.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency