



London Breed, Mayor

Amanda Eaken, Chair
Gwyneth Borden, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

April 20, 2023

Rick Swig, President
San Francisco Board of Appeals
49 South Van Ness Ave., Ste. 1400
San Francisco, CA 94103

SUBJECT: Taxi Permit Appeals at the Board of Appeals

Dear President Swig:

Thank you for a very productive meeting on March 23 with myself, San Francisco Municipal Transportation Agency (SFMTA) Director of Taxi and Accessible Services, Kate Toran, and SFMTA Board of Directors (Board) Chair Amanda Eaken. We appreciate that you and Board of Appeals (BOA) Director Julie Rosenberg took the time to join us in person to discuss taxi appeals and Vice President Jose Lopez's letter dated January 9, 2023. I was particularly impressed with your depth of experience as a public servant in San Francisco and your approach to ensuring that vulnerable citizen's feel heard and understood throughout the hearing process. I share your commitment to ensuring that all participants are treated with dignity and respect throughout the hearing process. Based on the thoughtful suggestions raised at the meeting, I will ensure that the (SFMTA) develops and publishes on our website a Hearing Officer code of conduct and a description of due process rights written in language understandable to the general public.

I also want to respond in writing specifically to the matters raised in Vice Chair Lopez's letter and provide more context for my decision regarding taxi appeals and the Board of Appeals, which we also discussed at the meeting. My decision to discontinue the practice of allowing taxi-related matters before the BOA is part of a larger effort called [Mobility Permit Harmonization](#), which was undertaken to standardize how permits are regulated across the various mobility permits that the SFMTA issues. One major standardization effort pertains to the appeals process. Prior to Permit Harmonization, staff discovered that each permit program had a unique hearing process, with different appeal deadlines. This created the possibility that a single operator with multiple permits across multiple modes would have a different regulatory scheme for each. Standardizing the appeals process across multiple modes provides greater clarity for all involved by eliminating potential confusion. Taxi permits are the only permit program administered by the SFMTA that have a second level of review beyond the SFMTA Hearing Section. At the time that I made the decision to end this practice, my rationale was to bring taxi permits into alignment with all other permits issued by the SFMTA.



The SFMTA has exclusive jurisdiction over taxi-related functions and regulation under the City's Charter. Pursuant to this authority, the SFMTA Board adopted Article 1100 of the Transportation Code, establishing the comprehensive regulatory scheme for the taxi industry. Amendments to Article 1100 may only be made by the SFMTA Board at a duly noticed public meeting. Members of the public have the opportunity to participate in this legislative process by making public comment.

The Transportation Code provides clear guidance to the Hearing Officer regarding the scope of their authority. When hearing an appeal of a taxi permit decision, the Hearing Officer's authority is limited to the regulations in Article 1100 of the Transportation Code. Specifically, a Hearing Officer's 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." Nothing in Article 1100 allows the Hearing Officer to excuse the statutory requirements applicable to permit holders based on non-statutory equitable considerations. If Hearing Officers are allowed to issue decisions that are inconsistent with the Transportation Code, such actions effectively undermine the SFMTA Board's policy-making authority, the ability of the public to participate in the legislative process, and the SFMTA Taxi Division's ability to apply the Transportation Code to regulate the industry. Accordingly, we believe that to the extent discretion is warranted in a particular situation, such enforcement discretion rests with the Taxi Division, not with the Hearing Officer.

I have full confidence in the SFMTA's hearing process and the ethical wall that is maintained between the [SFMTA Hearing Section](#) and the other divisions that issue and regulate mobility permits. Any appeals involving an SFMTA permit are heard by the Hearing Section, whose sole duty is to conduct fair, professional and unbiased hearings. Due process is a very important value to the agency, and it is an essential component of regulating all permits issued by the SFMTA. The Hearing Section is housed in a separate division from those that issue or regulate permits, with a separate director overseeing the division. That director has their own assigned Deputy City Attorney, who provides advice. There is also an ethical wall between advice attorneys at the Office of the City Attorney, ensuring that Hearing Officers are indeed independent. I appreciate your comments at our meeting regarding strengthening due process and ethical walls, and as I noted earlier, I am following up to ensure that the SFMTA posts a Hearing Officer code of conduct and a description of due process rights written in language understandable to the general public on our website.

We also discussed the critical aspect of maintaining the independence of Hearing Officers and specifically the express prohibition of ex parte communications. The hearing procedures in Section 1120 of the Transportation Code state that "[n]o person or agency may communicate directly or indirectly with a Hearing Officer at any time while a case is pending unless there is notice and an opportunity for the other party to participate." Both SFMTA staff and the Office of the City Attorney abide by this rule. In the instances you referenced, all communications sent to the Hearing Officers included the appellants and their representatives, providing them with the requisite notice



and opportunity to respond. Requests for reconsideration are not typical, and only occurred in instances where the Taxi Division believed the Hearing Officer's decision exceeded their authority. In sum, the requests for reconsideration were made strictly in accordance with the rules of Section 1120.

As we discussed at our meeting, I paused the withdrawal of SFMTA's consent to allow taxi permit decisions to be heard by the BOA in order to reset the process and allow time for Board-to-Board communication. This pause had the desired outcome, allowing for our meeting to occur as well as providing Director Toran more time to hear from the taxi industry about this matter at public taxi outreach meetings.

At its April 18th meeting, the SFMTA Board voted to remove references to the BOA from the Transportation Code. This memorandum provides written confirmation that the SFMTA will discontinue the informal practice of allowing the BOA to hear appeals related to taxi permit decisions as of April 20, 2023. There are no taxi permit appeals pending before the BOA. Notwithstanding the end of the relationship between the SFMTA and the BOA, 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.

Thank you again for a very productive meeting, for providing helpful recommendations that we are working on implementing, and for the Board of Appeals' years of service hearing taxi permit decisions.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey Tumlin".

Jeffrey Tumlin
Director of Transportation

cc: Mayor London Breed
San Francisco Board of Supervisors and Angela Calvillo, Clerk of the Board
SFMTA Board of Directors and Bree Mawhorter, CFO



London Breed
Mayor

Julie C. Rosenberg
Executive Director

January 9, 2023

Jeffrey Tumlin, Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Jeffrey.tumlin@sfmta.com

Re: Taxi Permit Appeals at the Board of Appeals

Dear Director Tumlin:

I am writing to you on behalf of the Board of Appeals (BOA). At the outset, we want to thank you for your letter, dated December 5, 2022, wherein you rescinded the SFMTA's decision to discontinue the practice of allowing appeals of taxi permit decisions to be heard by the BOA. We truly appreciate the fact that you considered the commissioners' views expressed at the BOA hearing on November 16, 2022.

This letter will address: (1) whether taxi permit appeals should continue to be heard by the BOA, and (2) if the appeals will *not* be heard by the BOA, the factors considered by the BOA commissioners when making decisions on these types of cases.

When making the decision about whether taxi matters should be heard by the BOA or remain solely within the SFMTA, we think it is important for the SFMTA to consider the advantages of the BOA process, which include: extensive public input and participation, having an independent body review agency decisions, and access to a quasi-judicial body for members of the public who are unable to pursue legal remedies in a court of law.

Having SFMTA taxi matters heard alongside non-SFMTA items on the BOA's agenda provides a broader audience for such hearings and promotes a higher degree of public exposure to the issues raised in such matters. Similarly, the BOA, as a body existing outside of the SFMTA (the commissioners are appointed by the Mayor and the President of the Board of Supervisors), incorporates diverse viewpoints informed by the commissioners' collective experience handling and resolving a wide variety of appeals across many San Francisco agencies. Regarding the benefit of access to a quasi-judicial body, we know that many members of the public: (1) cannot afford to pursue legal remedies in court given the high cost of court fees and attorneys, and (2) lack the sophistication and skills required to represent themselves effectively in court. For many San

Francisco residents, the BOA is their last realistic chance for an independent audience to hear their arguments in an open public forum outside of the agency from which they seek relief. Consequently, many members in the taxi industry would be substantially and negatively impacted if their right to appeal to the BOA is taken away, as they would not have a forum to address their appeals or grievances unless they have the means to go to court.

We also think that the SFMTA should consider recent questions raised about the independence of SFMTA hearing officers. These questions came up in the context of cases where decisions were reconsidered by SFMTA hearing officers after the hearing officers had previously issued decisions that were not favorable to the SFMTA Taxi Division.¹ In each such case, after receiving a decision that overturned the SFMTA Taxi Division's revocation of a medallion, counsel for the SFMTA reached out directly to the SFMTA hearing officer and requested that he reconsider the decision. The record showed that the hearing officers ultimately changed their decisions after receiving these communications. Given that the communications submitted to the record suggest that several decisions may have been reconsidered by SFMTA hearing officers, a reasonable member of the public might question whether the SFMTA hearing officers are sufficiently independent. Given the composition of the BOA and its existence outside of the SFMTA as noted above, the BOA may have a greater potential of surviving this type of scrutiny by the public.

We acknowledge that the SFMTA is the expert on taxi matters, and the BOA would never purport to occupy that role. We believe, however, that the BOA provides the expertise and experience in evaluating arguments with public participation and following extensive due process procedures. When taxi matters come before the BOA, the SFMTA can share its expertise with the commissioners as it presents its positions before the BOA. We think you would agree that the appearance of independence and impartiality are important tenets of due process, and thus ask that these questions regarding independence be considered as the SFMTA makes its decision as to whether or not to continue to allow taxi permit appeals to be heard by the BOA.

If the SFMTA ultimately decides that the BOA should *not* hear taxi permit appeals, then the commissioners would respectfully suggest that the SFMTA provide guidance to its hearing officers on the appropriateness and applicability of equitable defenses to their decision-making processes. We understand that the Transportation Code requires that SFMTA hearing officers base their decisions on the requirements set forth in Article 11 of the Transportation Code.² Article 11 of the Transportation Code also states that its purpose includes "to improve taxi service to the public and to protect the public health and safety," and to "promote the general welfare."³

In this context, we would offer that it is appropriate for SFMTA hearing officers to consider equitable defenses, which are long-standing legal principles available as affirmative defenses in a court of law, as they carry out important due process functions and allow the SFMTA to fulfill its legislative mandate under Article 11 of the Transportation Code. These equitable defenses include, but are not limited to, estoppel, waiver, unclean hands, duress, unconscionability, and laches. In our

¹ Decisions on Reconsideration: SFMTA v. George Horbal (July 9, 2021) and SFMTA v. James Cortesos (July 22, 2021).

² San Francisco Transportation Code, Division II, Article 1100, Section 1120(e)(1).

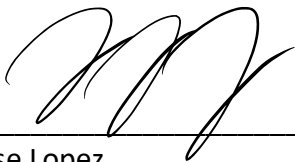
³ San Francisco Transportation Code, Division II, Article 1100, Section 1101(b).

experience, quasi-judicial hearings, such as those conducted by SFMTA hearing officers, provide high degrees of due process when they fully consider individual requests for exceptions to administrative rules of general applicability, which cannot account for all possible factual circumstances. We would expect that such exceptions would be rare, but we would suggest that the possibility for such exceptions should exist.

In SFMTA taxi matters the BOA has heard since September 2021, following the SFTMA's comprehensive permit review and enforcement initiative undertaken in 2019 and 2020, we have found three such instances where equitable defenses were important considerations for our decisions.⁴ These decisions took into consideration the elements of estoppel, based in part, on the permit holders' testimony suggesting that they relied in good faith on the direction of SFTMA representatives stating that they did not need to possess a valid A-Card or CA Driver's License in order to renew their medallions. The BOA also considered the balance between the public interest in enforcement and the injuries that are faced by elderly and disabled appellants whose medallions have been revoked. While we cannot speak to the applicability of such analysis to any future matters that may come before SFMTA hearing officers or the BOA, we would suggest that any forum in which similar matters may be heard should include equitable defenses in its analytical framework in order to reach a just outcome.

The commissioners and I look forward to further dialogue with you and the SFMTA Board of Directors about these matters.

Sincerely,



Jose Lopez
Vice President, Board of Appeals

Cc:

Mayor London Breed
mayorlondonbreed@sfgov.org

San Francisco Board of Supervisors
c/o Angela Calvillo, Clerk of the Board
Angela.calvillo@sfgov.org
Board.of.supervisors@sfgov.org

⁴ Appeal No. 21-064 (George Horbal v. SFMTA), Appeal No. 21-069 (Cortesos v. SFMTA) and Appeal No.22-007 (Skarak v. SFMTA). These cases were decided by the Board of Appeals on November 16, 2022.



DAVID CHIU
City Attorney

STEPHANIE STUART
Deputy City Attorney

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

PUBLIC COMMENT

From: genetic@igc.org
To: [BoardofAppeals \(PAB\); Silva, Christine \(MTA\)](#)
Subject: Fw: Injustice
Date: Wednesday, April 19, 2023 12:15:22 PM
Attachments: [image.png](#)

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-----Forwarded Message-----

From: genetic@igc.org <genetic@igc.org>
Sent: Apr 19, 2023 12:07 PM
To: <MayorLondonBreed@sfgov.org>
Cc: Infotaxi <infotaxi@medallionholders.com>
Subject: Injustice

April 19, 2023

Mayor London Breed
City Hall
1 Dr Carlton B. Goodlett Place
Room 200
San Francisco, CA 94102

Dear Mayor,

Your City Attorney hired a deputy who advised the San Francisco Municipal Transportation Agency that one class of citizens could not appeal adverse rulings to the Board of Permits Appeals. By a unanimous vote the SFMTA said taxi drivers could not go up the judicial ladder and appeal to San Francisco Board of Appeals to redress an adverse judgment. This Board has not yet said building permits from Chinese people could not be appealed or that housing modifications in Nob Hill could not be appealed, but only adverse promulgation from people in the taxi industry could not be appealed.

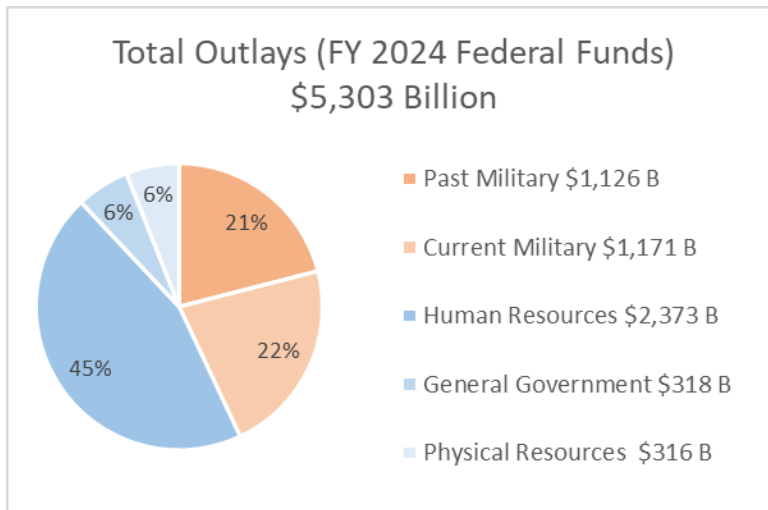
You need a better City Attorney.

D.T. Neyhart

415xnx864xnx5237

genetic@igc.org

Where Your Income Tax Money Really Goes



Military: 43% at \$2,297 Billion

Non-Military: 57% at \$3,007 Billion

Past Military \$1.126 Billion

- Veterans' Benefits \$320 B
- Interest on national debt \$806 B (80% est. to be created by military)

Current Military \$1,171 Billion

Total DoD \$862 B:

- Personnel \$194 B
- Op. & Maint. \$346 B
- Procurement \$156 B

- Research & Dev. \$147 B
- Construction \$15 B
- Family Housing \$1.7 B
- adjustments \$2.3 B

Non-DoD Military:*

- Army Corp. (mil.) \$152 B
- DoE nuke weapons \$32 B

**based on coding and the military nature of activities, such as armed border control, DoD space flights*

Human Resources \$2.373

General Government \$318 Billion

Physical Resources \$316 Billion

From: [Marcelo Fonseca](#)
To: [BoardofAppeals \(PAB\)](#)
Subject: Fw: Calendar Item #11 - Amending Transportation Code to Remove References to the Board of Appeals - April 18, 2023
Date: Sunday, April 16, 2023 9:28:04 AM

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

Dear Commissioners,

Below are my written comments to the MTA Board regarding their intent to terminate cab drivers' due process appeal rights to the Board of Appeals. As you may notice, I forwarded it to the Board of Supervisors.

Thank you very much for your efforts in recommending that the MTA not go ahead with this. Hopefully, their Board listened and will vote NO on this item.

Best regards,

Marcelo Fonseca
mdf1389@hotmail.com
415-238-7554

From: Marcelo Fonseca <mdf1389@hotmail.com>
Sent: Saturday, April 15, 2023 4:57 PM
To: Board of Supervisors <board.of.supervisors@sfgov.org>
Subject: Fw: Calendar Item #11 - Amending Transportation Code to Remove References to the Board of Appeals - April 18, 2023

FYI,

This is a VERY URGENT MATTER; I ask that you read it before the MTA's Board Meeting this coming Tuesday, April 18th.

Thank you very much.

Marcelo Fonseca
mdf1389@hotmail.com

From: Marcelo Fonseca <mdf1389@hotmail.com>
Sent: Saturday, April 15, 2023 4:45 PM
To: MTA Board <mtaboard@sfmta.com>
Subject: Calendar Item #11 - Amending Transportation Code to Remove References to the Board of Appeals - April 18, 2023

Dear Directors,

My name is Marcelo Fonseca; I am a career cab driver, full-time driver for more than thirty years and I have been a K medallion holder since February of 2009.

My written comments are regarding item #11 on your agenda for the April 18th meeting.

On page three of your staff report, the Taxi Division states:

"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, which are taken very seriously, that disallow staff from discussing hearings with the Hearing Section."

What your staff and the Taxi Division have failed to report is that in mid-2021, the City Attorney had two underlings - MTA administrative hearing officers - reverse their final case rulings which had been in favor of permit holders with disabilities. Eventually, the Commissioners at the Board of Appeals overturned them by unanimously voting in favor of the disabled appellants.

The evidence presented in these cases proved that the "ethical firewall" MTA staff, and some directors on this Board, bragged about and claimed to have existed between the City Attorney and their hearing officers, had already been jumped over to go after the elderly disabled medallion holders which your staff had referred to as "low hanging fruit".

For that reason alone, I URGE all of you to vote NO on item #11.

Additionally, the City Attorney contends that the MTA's exclusive authority clause in Prop A of 2007 supersedes the 1932 City Charter section regarding taxi permit appeals. At best, that is a dubious opinion. The due process appeal right to an independent and impartial body is not a "taxi-related function". Here is Prop A's clause:

"In order to fully integrate taxi-related functions into the Agency (should the powers and duties of the Taxi Commission be transferred to the MTA), the Agency shall have the same exclusive authority over taxi-related functions and taxi-related fares, fees, charges, budgets, and personnel it has over the Municipal Railway and parking and traffic fares, fees, charges, budgets, and personnel. Once adopted, Agency regulations shall thereafter supercede (sic) all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations."

If this Agency is going to follow such false, mean and sadistic advice from the City Attorney, how can members of the taxi industry, especially disabled medallion holders, trust you as our regulators?

Prop A of 2007 -- when Mayor Newsom and the Board of Supervisors proposed reassigning jurisdiction of the taxi industry from the Taxi Commission to the MTA -- was sold as a promise to reform the medallion system and improve the industry. One way this Agency could deliver that elusive, broken promise would be by not abusing its power.

Terminating permit holders' due process rights to appeal to the Board of Appeals,

especially after it has been proven that there is no impartiality in your hearing process, is an abuse of power and it does not benefit anyone in the taxi industry nor the riding public.

I URGE all of you to make the right, ethical and moral decision; I URGE all of you to deliver Prop A's promise to improve the taxi industry and again, I URGE all of you to vote NO on terminating our right to appeal to the Board of Appeals.

Thank you for your time and consideration.

Sincerely,

Marcelo Fonseca
mdf1389@hotmail.com
415-238-7554



San Francisco Taxi Workers Alliance

April 17, 2023

Amanda Eaken, Chair, and Members
SFMTA Board of Directors
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103

Dear Chair Eaken and Board Members:

Since the issue of eliminating taxi permittees' right of appeal to the Board of Appeals was last on your agenda, the circumstances surrounding the matter have changed dramatically. On November 16 of last year -- the day after your last hearing on this issue -- the Board of Appeals unanimously voiced its support for continuing its jurisdiction over these appeals, and voted to inform your Board of its deep concerns over the elimination of this right.

On January 9, 2023, Board of Appeals Vice Present Jose Lopez wrote to Director Tumlin about the Board's deliberations on the matter. He explained the advantages of retaining these appeals and wrote, "For many San Francisco residents, the BOA is their last realistic chance for an independent audience to hear their arguments in an open public forum outside of the agency from which they seek relief. Consequently, many members in the taxi industry would be substantially and negatively impacted if their right to appeal to the BOA is taken away, as they would not have a forum to address their appeals or grievances unless they have the means to go to court."

The San Francisco Taxi Workers Alliance is deeply troubled by the fact that SFMTA staff has chosen to ignore the position of the Board of Appeals -- four of whose members are prominent attorneys -- on this issue of critical importance to all of us in the taxi industry, and particularly to its drivers.

It is also most troubling that staff decided to bring back to this Board its proposal to eliminate these appeals without even informing the Board of Appeals that they intended to do so. On March 23, a meeting took place between representatives of the Board of Appeals and the SFMTA to discuss the future of these appeals. President Rick Swig reported on that discussion at last Wednesday's Board of Appeals meeting. He said the SFMTA "will get back to us in a formal fashion at some point . . . I think we will have their formal response in a constructive fashion at sometime soon." In response to a question from Commissioner John Trasviña he added, "If an appeal was requested I believe it would still come to us on the subject of taxi licenses." Yet, four days before this meeting took place, the SFMTA posted a public notice stating that the elimination of the appeal right would be on Tuesday's agenda. Why was the Board of Appeals kept in the dark about this?

The staff report on this item refers to the appeal right as “duplicative” of hearings before an SFMTA hearing officer. **These hearings are not duplicative.** They provide a further layer of protection for drivers whose livelihoods may be in jeopardy from adverse decisions. This right, which has been enshrined in the San Francisco Charter for many decades, applies to all holders of permits issued by the City and County of San Francisco, with extremely limited exceptions. **SFTWA maintains that this right continues in effect for taxi permittees under San Francisco Charter Section 4.106.** But regardless of whether the Charter guarantees the right, eliminating it for taxi drivers would constitute a gross form of discrimination against a workforce composed mainly of immigrants with extremely limited financial resources and minimal possibilities of pursuing their rights through a court challenge.

The SFMTA’s hearing process – a taxi permittee’s only administrative remedy if the changes before you are approved -- has been badly tainted. As the Board of Appeals letter states:

We also think that the SFMTA should consider recent questions raised about the independence of SFMTA hearing officers. These questions came up in the context of cases where decisions were reconsidered by SFMTA hearing officers after the hearing officers had previously issued decisions that were not favorable to the SFMTA Taxi Division. **In each such case, after receiving a decision that overturned the SFMTA Taxi Division’s revocation of a medallion, counsel for the SFMTA reached out directly to the SFMTA hearing officer and requested that he reconsider the decision. The record showed that the hearing officers ultimately changed their decisions after receiving these communications.** (Emphasis added.)

For your information, we are appending communications from one taxi appeal (that of K medallion holder George Horbal), demonstrating that a supposed “firewall” between SFMTA staff and the hearing officer was non-existent. The first email is from the Acting Manager of the SFMTA Hearing Section to the Deputy City Attorney advising the SFMTA on taxi hearings. It states that the Hearing Section has “come to accept the need to reconsider our decisions” in medallion revocation cases, and advises the SFMTA that it need not appeal. (The language strongly suggests that this is not the first communication between the Hearing Section and the attorneys advising the SFMTA.) One week later, the Deputy City Attorney directly emailed an SFMTA Hearing Officer. Among those copied on the email is the Enforcement and Legal Affairs Manager of the SFMTA Taxicab, Access & Mobility Services Division. With seeming impatience, the email urges the Hearing Officer to “confirm you will withdraw or reconsider your decision in Mr. Horbal’s case before June 24, 2021 [i.e., in two days], to avoid the need for the taxi division to file a protective appeal.” (Words in brackets added.)

The Staff Report’s reference to an “ethical wall” between all SFMTA divisions and the Hearing Section, and its carefully worded avowal that “the Hearing Section has clear policies, which are taken very seriously, that disallow staff from discussing hearings with the Hearing Section” are meaningless if taxi staff’s attorneys engage in discussions of pending appeals with the Hearing Section (and taxi staff is cc’d on those discussions). **This is not an “ethical wall”; it is blatant interference.**

In each of the reconsidered cases, the hearing officers who reversed their prior decisions made it clear that they did so under pressure. The decision on reconsideration in George Horbal's appeal states "our Hearing Section officers would have preferred to continue these cases, or to otherwise defer their decisions until the SFMTA Board might have had the opportunity to definitively decide the issues of medallion surrender—or until the current litigation between the Federal Credit Union and the SFMTA is resolved, which would presumably allow medallion transfers to resume." How, under these conditions, can a taxi permittee ever have confidence in obtaining a fair hearing?

At the previous SFMTA Board hearing on this matter, then-Chair Gwyneth Borden recognized that a central issue in this controversy is the unresolved matter of the city's broken medallion system, particularly as it relates to long-time drivers who have K medallions. She asked taxi staff to develop "meaningful policy" on this issue and "when this item comes back [to the Board], to talk about some potential solutions to the K situation." (Words in brackets added.) Director Toran replied, "We expect to bring the item back again and have that comprehensive discussion." But the "comprehensive discussion" is not on the agenda, and not even mentioned in the Staff Report. At the very least, this item should be continued until taxi staff honors its commitment.

The elimination of the right of appeal would pour salt into an already open wound. We call upon you to abandon this ill-conceived idea, preserve the right of appeal, and declare a moratorium on all K medallion non-renewals, revocations and suspensions, at least until a comprehensive overhaul of the entire medallion system, including a just resolution for the crisis of P medallion holders, is in place.

Sincerely,



Mark Gruberg
Member of the SFTWA Executive Board

cc: Board of Supervisors
Board of Appeals

From: Doyle, James <James.Doyle@sfmta.com>
Sent: Tuesday, June 15, 2021 5:32 PM
To: Emery, Jim (CAT) <Jim.Emery@sfcityatty.org>
Subject: Taxi Medallion Decisions

Hello Mr. Embry:

After some extensive discussion with our hearing officers, we have come to accept the need to reconsider our decisions in each of these medallion revocation cases that have already been adjudicated. Those decisions on reconsideration will be forthcoming later this week or early next. The SFMTA need not appeal. Thanks, James

James Doyle

Manager (Acting)

SFMTA Hearing Section

7/31/2021

Subject: Jim Emery email to Rudy Sebastian

----- Forwarded message -----

From: Emery, Jim (CAT) <Jim.Emery@sfcityatty.org>

Date: Tue, Jun 22, 2021, 10:57 AM

Subject: SFMTA v. Horbal (Medallion # 1303)

To: Sebastian, Rudy (MTA) <Rudy.Sebastian@sfmta.com>

Cc: georgehenrygh73@gmail.com <georgehenrygh73@gmail.com>, HearingsGeneral@sfmta.com <HearingsGeneral@sfmta.com>, Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>, Cranna, Philip (MTA) <Philip.Cranna@sfmta.com>

Dear Mr. Sebastian,

I am advising the Taxi Division in the recently adjudicated medallion non-renewal cases. Below is the email I received on June 15 from your colleague Mr. Doyle, advising me that the SFMTA hearing officers "have come to accept the need to reconsider our decisions in each of these medallion [non-renewal] cases that have already been adjudicated. Those decisions on reconsideration will be forthcoming later this week or early next." Please confirm you will withdraw or reconsider your June 9 decision in Mr. Horbal's case before June 24, 2021, to avoid the need for the taxi division to file a protective appeal.

Thank you,



Jim Emery

Deputy City Attorney

Office of City Attorney Dennis Herrera

(415) 554-4628 Direct

www.sfcityattorney.org

7/31/2021

Heidi Machen
Attorney-at-Law
345 Franklin Street, Ste. 333
San Francisco, CA 94102
HeidiMachen@machenlaw.com

SFMTA Board of Directors
Sent via email only: MTABoard@sfmta.com

RE: April 18, 2023 General Board Meeting, Item #11 (removing references to Board of Appeals from Transportation Code with intent to end right of taxi permit appeal to BOA).

Honorable Chair Eakin, VC Borden and Commissioners Cajina, Heminger, Hinze, and Yekutieli:

I write to address Board item #11 on your April 18 agenda. Specifically, I ask that you reject this wrong-headed attempt to remove all reference of the Board of Appeals from the Transportation Code with the intent to end the right of taxi permittees to appeal decisions of the SFMTA to the Board of Appeals.

In my professional opinion as an attorney and past San Francisco taxicab regulator, I believe that removing the right of taxi permit holders to appeal decisions to the Board of Appeals would be contrary to existing law. As well, cutting the BOA out of decision-making on the rights of taxi permit holders is simply bad public policy.

SFMTA staff attempts to justify removing BOA's authority by pointing to Proposition A. It is true that Prop A changed the Charter with respect to SFMTA's authority. However, Prop A did NOT change the Charter with respect to the authority of the Board of Appeals. Indeed, SFMTA cannot identify anywhere within the legal language of this ballot measure that removed the authority of the Board of Appeals to hear these appeals. Why? Because there is no such language.

Indeed, the Board of Appeals has its own section, Charter 4.106(b), attached herein in Exhibit A. With limited carve-outs for the Recreation and Park Commission or Department, the Port Commission or certain building or demolition permits, the BOA holds chartered authority to "hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn. . ." This enshrined right to appeal would have to be explicitly changed by the voters – because it is contained within the Charter.

Further, the San Francisco Business and Tax Regulations codifies the right of permit holders, including taxi permit holders, to appeal any decisions involving issuance, denial or revocation. (A true and accurate copy is attached in Exhibit A for convenience.) In my professional opinion, this section of the Business and Tax Regulations would have to be modified, as well, in order to accomplish what SFMTA staff asks you to do simply by resolution.

Most shockingly, should SFMTA approve this resolution and refuse to acknowledge the right of taxi permit holders to appeal its decisions to BOA, SFMTA risks creating legal liability for the Board of Appeals. In fact, if SFMTA refuses to acknowledge the BOA's right to hear these appeals; and, if BOA correspondingly stops hearing these appeals, I opine that a permit holder would have standing to then sue the Board of Appeals for failing to execute its duties under both the Charter and the Business and Tax Regulations Code.

The Board of Appeals, by letter dated January 9, 2023, articulate some very persuasive public policy reasons to maintain the status quo. For convenience, I have attached that letter here as Exhibit B (underscores added for emphasis).

Notably, The BOA argues that its appeals process is patently more independent than the SFMTA's hearing officer section. BOA is a "quasi-judicial" body, separate from the SFMTA, that is able to provide oversight in consultation with laws and policies beyond the narrow confines of the Transportation Code. By contrast, hearing officers are limited to the Transportation Code in reviewing staff decisions. Additionally, hearing officers, as paid staff of SFMTA, may feel pressured - and have been pressured - to conform their decisions to the agency's decision.

In close, I strongly urge you to reject Item #11 on the SFMTA Board's April 18 agenda.

Sincerely,



Heidi Machen

Cc: SF Board of Appeals

EXHIBIT A

San Francisco Charter 4.106(b):

Charter 4.106(b) The Board shall hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit, except for a permit or license under the jurisdiction of the Recreation and Park Commission or Department, or the Port Commission, or a building or demolition permit for a project that has received a permit or license pursuant to a conditional use authorization.

**San Francisco Business and Tax Regulations Code Article I,
SEC. 30. APPEALS TO BOARD OF APPEALS**

On the issuance, denial or revocation of any permit, any applicant for a permit who is denied such permit, or any permittee whose permit is ordered revoked, or any person who deems that his interest or property, or that the general public interest will be adversely affected as the result of operations authorized by or under any permit granted or issued, or the transfer thereof, may appeal to the Board of Appeals. Such appeal shall be in writing, and except for variances, shall be filed with the Board of Appeals not later than 15 days after the action of the department from which the appeal is taken. An appeal from the decision on a variance shall be filed with the Board of Appeals not later than 10 days after the action of the Zoning Administrator.

The form and notice of said appeal, and the procedure thereon, shall be as provided by ordinance, and when not so provided then in such form as is provided by the Board of Appeals.

EXHIBIT B

City and County of San Francisco



London Breed
Mayor

Board of Appeals

Julie C. Rosenberg
Executive Director

January 9, 2023

Jeffrey Tumlin, Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Jeffrey.tumlin@sfmta.com

Re: Taxi Permit Appeals at the Board of Appeals

Dear Director Tumlin:

I am writing to you on behalf of the Board of Appeals (BOA). At the outset, we want to thank you for your letter, dated December 5, 2022, wherein you rescinded the SFMTA's decision to discontinue the practice of allowing appeals of taxi permit decisions to be heard by the BOA. We truly appreciate the fact that you considered the commissioners' views expressed at the BOA hearing on November 16, 2022.

This letter will address: (1) whether taxi permit appeals should continue to be heard by the BOA, and (2) if the appeals will *not* be heard by the BOA, the factors considered by the BOA commissioners when making decisions on these types of cases.

When making the decision about whether taxi matters should be heard by the BOA or remain solely within the SFMTA, we think it is important for the SFMTA to consider the advantages of the BOA process, which include: extensive public input and participation, having an independent body review agency decisions, and access to a quasi-judicial body for members of the public who are unable to pursue legal remedies in a court of law.

Having SFMTA taxi matters heard alongside non-SFMTA items on the BOA's agenda provides a broader audience for such hearings and promotes a higher degree of public exposure to the issues raised in such matters. Similarly, the BOA, as a body existing outside of the SFMTA (the commissioners are appointed by the Mayor and the President of the Board of Supervisors), incorporates diverse viewpoints informed by the commissioners' collective experience handling and resolving a wide variety of appeals across many San Francisco agencies. Regarding the benefit of access to a quasi-judicial body, we know that many members of the public: (1) cannot afford to pursue legal remedies in court given the high cost of court fees and attorneys, and (2) lack the sophistication and skills required to represent themselves effectively in court. For many San

Francisco residents, the BOA is their last realistic chance for an independent audience to hear their arguments in an open public forum outside of the agency from which they seek relief. Consequently, many members in the taxi industry would be substantially and negatively impacted if their right to appeal to the BOA is taken away, as they would not have a forum to address their appeals or grievances unless they have the means to go to court.

We also think that the SFMTA should consider recent questions raised about the independence of SFMTA hearing officers. These questions came up in the context of cases where decisions were reconsidered by SFMTA hearing officers after the hearing officers had previously issued decisions that were not favorable to the SFMTA Tax Division.¹ In each such case, after receiving a decision that overturned the SFMTA Tax Division's revocation of a medallion, counsel for the SFMTA reached out directly to the SFMTA hearing officer and requested that he reconsider the decision. The record showed that the hearing officers ultimately changed their decisions after receiving these communications. Given that the communications submitted to the record suggest that several decisions may have been reconsidered by SFMTA hearing officers, a reasonable member of the public might question whether the SFMTA hearing officers are sufficiently independent. Given the composition of the BOA and its existence outside of the SFMTA as noted above, the BOA may have a greater potential of surviving this type of scrutiny by the public.

We acknowledge that the SFMTA is the expert on taxi matters, and the BOA would never purport to occupy that role. We believe, however, that the BOA provides the expertise and experience in evaluating arguments with public participation and following extensive due process procedures. When taxi matters come before the BOA, the SFMTA can share its expertise with the commissioners as it presents its positions before the BOA. We think you would agree that the appearance of independence and impartiality are important tenets of due process, and thus ask that these questions regarding independence be considered as the SFMTA makes its decision as to whether or not to continue to allow taxi permit appeals to be heard by the BOA.

If the SFMTA ultimately decides that the BOA should *not* hear taxi permit appeals, then the commissioners would respectfully suggest that the SFMTA provide guidance to its hearing officers on the appropriateness and applicability of equitable defenses to their decision-making processes. We understand that the Transportation Code requires that SFMTA hearing officers base their decisions on the requirements set forth in Article 11 of the Transportation Code.² Article 11 of the Transportation Code also states that its purpose includes "to improve taxi service to the public and to protect the public health and safety," and to "promote the general welfare."³

In this context, we would offer that it is appropriate for SFMTA hearing officers to consider equitable defenses, which are long-standing legal principles available as affirmative defenses in a court of law, as they carry out important due process functions and allow the SFMTA to fulfill its legislative mandate under Article 11 of the Transportation Code. These equitable defenses include, but are not limited to, estoppel, waiver, unclean hands, duress, unconscionability, and laches. In our

¹ Decisions on Reconsideration: SFMTA v. George Horbal (July 9, 2021) and SFMTA v. James Cortesos (July 22, 2021).

² San Francisco Transportation Code, Division II, Article 1100, Section 1120(e)(1).

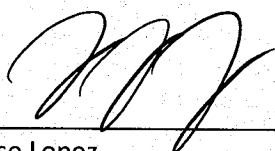
³ San Francisco Transportation Code, Division II, Article 1100, Section 1101(b).

experience, quasi-judicial hearings, such as those conducted by SFMTA hearing officers, provide high degrees of due process when they fully consider individual requests for exceptions to administrative rules of general applicability, which cannot account for all possible factual circumstances. We would expect that such exceptions would be rare, but we would suggest that the possibility for such exceptions should exist.

In SFMTA taxi matters the BOA has heard since September 2021, following the SFTMA's comprehensive permit review and enforcement initiative undertaken in 2019 and 2020, we have found three such instances where equitable defenses were important considerations for our decisions.⁴ These decisions took into consideration the elements of estoppel, based in part, on the permit holders' testimony suggesting that they relied in good faith on the direction of SFTMA representatives stating that they did not need to possess a valid A-Card or CA Driver's License in order to renew their medallions. The BOA also considered the balance between the public interest in enforcement and the injuries that are faced by elderly and disabled appellants whose medallions have been revoked. While we cannot speak to the applicability of such analysis to any future matters that may come before SFMTA hearing officers or the BOA, we would suggest that any forum in which similar matters may be heard should include equitable defenses in its analytical framework in order to reach a just outcome.

The commissioners and I look forward to further dialogue with you and the SFMTA Board of Directors about these matters.

Sincerely,



Jose Lopez
Vice President, Board of Appeals

Cc:

Mayor London Breed
mayorlondonbreed@sfgov.org

San Francisco Board of Supervisors
c/o Angela Calvillo, Clerk of the Board
Angela.calvillo@sfgov.org
Board.of.supervisors@sfgov.org

⁴ Appeal No. 21-064 (George Horbal v. SFMTA), Appeal No. 21-069 (Cortesos v. SFMTA) and Appeal No.22-007 (Skarak v. SFMTA). These cases were decided by the Board of Appeals on November 16, 2022.