

BOARD OF APPEALS

CITY & COUNTY OF SAN FRANCISCO

AGENDA FOR REGULAR MEETING - WEDNESDAY, NOVEMBER 16, 2022

5:00 P.M., HYBRID MEETING (IN-PERSON AND REMOTE ACCESS)

CITY HALL, ROOM 416, ONE DR. CARLTON B. GOODLETT PLACE

THE PUBLIC MAY JOIN THE MEETING IN-PERSON, BY COMPUTER (ZOOM) OR TELEPHONE:

Access by Computer:

<https://us02web.zoom.us/j/88479110374>

Access by Telephone:

Call: 1-669-900-6833

Webinar ID: 884 7911 0374

(1) PUBLIC COMMENT

At this time, members of the public may address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board except agenda items. With respect to agenda items, your opportunity to address the Board will be afforded when the item is reached in the meeting with one exception. When the agenda item has already been reviewed in a public hearing at which members of the public were allowed to testify and the Board has closed the public hearing, your opportunity to address the Board must be exercised during the Public Comment portion of the calendar. Each member of the public may address the Board for up to three minutes. At the discretion of the Board President, public comment may be limited to two minutes. If it is demonstrated that comments by the public will exceed 15 minutes, the President may continue Public Comment to another time during the meeting.

(2) COMMISSIONER COMMENTS & QUESTIONS

(3) ADOPTION OF MINUTES

Discussion and possible adoption of the November 2, 2022 minutes.

(4) APPEAL NO. 22-070

ZHIMIN LI, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION, Respondent
PLANNING DEPT. APPROVAL

175 Southwood Drive.

Appealing the ISSUANCE on September 23, 2022, to Gerardo Corpuz and Mary Allison, of an Alteration Permit (in response to Notice of Violation No. 202292465; legalize the construction of structure (existing deck) at rear yard which exceeds 8 feet in height and 100 square feet in area; new deck is approximately 6 by 9 feet).

PERMIT NO. 2022/0722/9084.

FOR HEARING TODAY.

(5) APPEAL NO. 22-007

<p>ROBERT SKRAK, Appellant(s)</p> <p>vs.</p> <p>MUNICIPAL TRANSPORTATION AGENCY, Respondent</p>	<p>Appealing the ISSUANCE on February 1, 2022, to Robert Skrak, of the Statement of Decision: SFMTA v. Robert Skrak (Robert Skrak does not have a current California Driver's License or an A-Card; the Taxi & Accessible Services' Notice of Nonrenewal is upheld, and Medallion No. 878 is revoked by the explicit operation of the provisions of the San Francisco Transportation Code).</p> <p>MEDALLION NO. 878.</p> <p>FOR FURTHER CONSIDERATION</p> <p>Note: On April 13, 2022, upon motion by Commissioner Lopez, the Board voted 3-1-1 (Vice President Lazarus dissented and President Swig absent) to grant the appeal and overturn the determination on the basis that the SFMTA is equitably estopped from revoking the medallion because Mr. Skrak reasonably relied on conversations with SFMTA managers and representatives who advised him that he had a waiver of the Full Time Driving Requirement and he should not sell his medallion. Further, allowing him to keep his medallion is necessary to avoid a grave injustice, it would not defeat a strong public policy and would not create any safety issues for the public. Lacking the four votes needed to pass the motion failed. Upon motion by Commissioner Honda, the Board voted 3-1-1 (Vice President Lazarus dissented and President Swig absent) to continue this matter to the Board's Call of the Chair for one year, on the basis that the SFMTA may enact legislation that would give Mr. Skrak the opportunity to sell his medallion. On May 9, 2022, President Swig recalled this Item from the Call of the Chair and placed it on the Board's July 20, 2022 calendar. On June 14, 2022, the matter was rescheduled to November 16, 2022.</p>
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(6) **APPEAL NO. 21-064**

GEORGE HORBAL, Appellant(s)

vs.

MUNICIPAL TRANSPORTATION AGENCY,
Respondent

Appealing the ISSUANCE, on July 9, 2021, of the Decision on Reconsideration: SFMTA v. George Horbal (REVOCATION of Taxi Medallion No. 1303: George Horbal does not have a current California driver's license and is not eligible to possess an A-Card. Without these licenses, the taxi medallion can be revoked pursuant to the Transportation Code. The Notice of Nonrenewal issued by SFMTA Taxi Services is upheld and the medallion is revoked).

MEDALLION NO. 1303.

FOR FURTHER CONSIDERATION.

Note: On September 1, 2021, upon motion by Commissioner Lopez, the Board voted 4-1 (Commissioner Lazarus dissented) to continue this Item to November 17, 2021 so that the SFMTA could provide data on medallions that were revoked on the grounds that the medallion holder did not possess a current CA driver's license or A-Card; the Board requested that the SFMTA provide data, if possible, back to 1978, but if not possible, then at a minimum since the records were made electronic. On November 17, 2021, upon motion by President Honda, the Board voted 3-1-1 (Commissioner Lazarus dissented and Vice President Swig absent) to grant the appeal and overturn the SFMTA Hearing Officer's Decision on Reconsideration, on the basis that there was not an adequate basis for the revocation of the taxi medallion. Lacking the four votes needed to pass, the motion failed. Upon motion by President Honda, the Board voted 4-0-1 (Vice President Swig absent) to continue this matter to February 16, 2022, so that: (1) Vice President Swig could participate in the vote, and (2) the parties could provide additional information to the Board on the three taxi medallion revocation cases cited in the appellant's brief which were heard by the Board in 2003. On February 16, 2022, upon motion by President Swig, the Board voted 2-3 (Commissioner Lopez, Commissioner Honda and Commissioner Chang dissented) to deny the appeal and uphold the determination on the basis that it was properly issued. Lacking the three

votes needed to pass the motion failed. Upon motion by Commissioner Honda, the Board voted 3-2 (President Swig and Vice President Lazarus dissented) to continue this matter to the Call of the Chair. On March 17, 2022, President Swig recalled this Item from the Call of the Chair and put it on the May 11, 2022 calendar. On May 11, 2022, upon motion by President Swig, the Board voted 2-2 (Commissioner Lopez and Commissioner Chang dissented) to deny the appeal and uphold the SFMTA Hearing Officer's Decision on the basis that it was properly issued because Mr. Horbal does not have a California Driver's License or an A-Card. Lacking the three votes needed to pass, the motion failed. Upon motion by Commissioner Chang, the Board voted 2-2 (President Swig and Vice President Lazarus dissented) to grant the appeal and overturn the SFMTA's Hearing Officer's Decision on the basis that Mr. Horbal relied on representations from SFMTA staff members that an A-Card was not required in order to maintain the medallion. Lacking the three votes needed to pass (given the vacancy on the Board), the motion failed. Upon motion by Commissioner Lopez, the Board voted 4-0 to continue this matter to November 16, 2022, on the basis that 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.

(7) APPEAL NO. 21-069

<p>JAMES CORTESOS, Appellant(s)</p> <p>vs.</p> <p>MUNICIPAL TRANSPORTATION AGENCY, Respondent</p>	<p>Appealing the ISSUANCE on July 22, 2021, of the Reconsideration of Statement of Decision: SFMTA v. James Cortesos (REVOCATION of Medallion No. 753: James Cortesos does not have a current California driver's license and is not eligible to possess an A-Card. Without these licenses, the taxi medallion can be revoked pursuant to the Transportation Code. The Notice of Nonrenewal issued by SFMTA Taxi Services is upheld and the medallion is revoked). MEDALLION NO. 753. FOR FURTHER CONSIDERATION. Note: On November 17, 2021, upon motion by President Honda, the Board voted 4-0-1 (Vice President Swig absent) to continue this matter to February 16, 2022, upon the request and with the consent of the parties and with good cause shown, more specifically so that Vice President Swig could participate in the vote and so that the parties could provide additional information to the Board on the three 2003 taxi medallion revocation cases cited in the brief submitted by Mr. Horbal for Appeal No. 21-064 which were heard by the Board in 2003. February 16, 2022: Upon motion by Commissioner Honda, the Board voted 3-2 (Vice President Lazarus and President Swig dissented) to continue this matter to the Call of the Chair. On March 17, 2022, President Swig recalled this Item from the Call of the Chair and put it on the May 11, 2022 calendar. On May 11, 2022, 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.</p>
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(8) SPECIAL ITEM: DISCUSSION AND POSSIBLE ACTION

On September 8, 2022, the San Francisco Municipal Transportation Agency (“SFMTA”) advised the Board of Appeals that it would discontinue the practice of having the Board hear appeals related to taxi permit decisions. The commissioners will: (1) consider the possibility of sending a letter to the SFMTA which explains the factors considered by the the Board when deciding these types of cases, and (2) discuss whether other agencies have the authority to add to or take away the types of matters that fall within the jurisdiction of the Board of Appeals.

ADJOURNMENT.

Note: The materials for each item on this agenda may include some or all of the following documents: Preliminary Statement of Appeal; Departmental determination being appealed; briefs submitted by Appellants, Permit Holders, Respondent Departments or Other Parties; submittals by members of the public; and correspondence. These items, and any materials related to an item on this agenda that are distributed to the Board members at the hearing, are available for public inspection at the Board's website <https://sf.gov/departments/board-appeals> and upon request by emailing the Board Office boardofappeals@sfgov.org. Please call 628-652-1150 if you have any questions concerning this agenda.

Date posted: **November 10, 2022**

MEMBERS OF THE BOARD OF APPEALS

RICK SWIG	PRESIDENT
JOSE LOPEZ	VICE PRESIDENT
ALEX LEMBERG	COMMISSIONER
JOHN TRASVIÑA	COMMISSIONER
J.R. EPPLER	COMMISSIONER

HYBRID MEETINGS

This meeting will be held in person at the location listed above. As authorized by California Government Code Section 54953(e) and Mayor Breed’s 45th Supplement to her February 25, 2020 emergency proclamation, it is possible that some members of the Board of Appeals may attend this meeting remotely. In that event, those members will participate and vote by video. Members of the public may attend the meeting to observe and provide public comment at the physical meeting location or by telephone/online (access information listed above).

PROCEDURE AT HEARINGS

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Except when the Presiding Officer finds good cause to order the presentations otherwise, the order of presentation of an appeal shall be as follows: (a) the appellant shall speak first and shall be allowed seven minutes to present relevant testimony and evidence. Then the permit holder, representatives of the department, board, commission or person from whose order the appeal is taken, and/or other parties, shall be allowed seven minutes for presentation of relevant testimony and evidence. Three minutes for rebuttal shall be provided to all parties in this same order; (b) the Board may request a departmental response at its own discretion. For rehearing requests and jurisdiction requests, each party shall be allowed three minutes to present testimony and evidence, with no rebuttal.

Other persons desiring to speak before the Board on an appeal may speak once for up to three minutes, unless the presiding officer further limits time uniformly.

Those members of the public who intend to testify about a particular appeal and wish to have the Board give their testimony evidentiary weight for purposes of deciding the appeal are asked to take an oath. Please note that any member of the public may speak without being sworn-in pursuant to their rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code).

SPECIAL NOTES

The Board reserves the right to not start an item on the agenda after 10:00 p.m.

If the Board continues a matter to a specific date that is announced to the parties in the hearing room, no additional mailed notice will be sent. Please call the Board office at (628) 652-1150 for scheduling or other information during regular business hours or visit our website at www.sfgov.org/boa.

The complete Rules of the Board are available for review on our website.

Material submitted by the public for Board review prior to a scheduled hearing before the Board, should be addressed to the Board President, and be received at boardofappeals@sfgov.org, no later than 4:30 p.m. one Thursday prior to the scheduled public hearing. Persons unable to attend the scheduled public hearing may submit written comments regarding a calendared item to boardofappeals@sfgov.org. Comments received before noon on the day of the hearing will be made a part of the official record and will be brought to the attention of the Board at the public hearing. Please note that names and addresses included in these submittals will become part of the public record. Submittals may be made anonymously.

Pursuant to Government Code § 65009, if you challenge, in court, the approval of a variance or development permit, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Appeals at, or prior to, the public hearing.

Calendared items are sometimes withdrawn or rescheduled the day of hearing or are taken out of order to accommodate special needs. The Board urges all parties to be present at the hearing from 5:00 p.m. so that everyone has an opportunity to participate in the relevant public hearing when it is called.

PROHIBITION OF SOUND-PRODUCING ELECTRONIC DEVICES

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

ACCESSIBILITY INFORMATION

If you need technical assistance or would like to receive instruction on how to access the meeting via Zoom, please email or call the Board Office: boardofappeals@sfgov.org or (628) 652-1150.

To obtain a disability-related modification or accommodation, including auxiliary aids or services to participate in the meeting, please contact the Board office at least 48 hours before the meeting at boardofappeals@sfgov.org or (628) 652-1150.

American sign language interpreters, translation services and/or sound enhancement will be available upon request by contacting Board staff at (628) 652-1150 at least 48 hours prior to the hearing.

Intérpretes de lenguaje de señas americano, servicio de traducción y/o mejoramiento del sonido estará disponible a petición contactando con personal de la Junta al (628) 652-1150 por lo menos 48 horas antes de la audiencia.

美国手语翻译, 翻译服务和/或声音增强将可在聆讯前48小时通过联系652-1150局人员要求.

Ang mga tagapagsalin sa lenggwaheng pasenyas, mga serbisyong pagsasalin at/o mga gamit upang pabutihin ang pakikinig ay maaaring hilingin sa Board Staff sa (628) 652-1150 sa hindi bababa na 48 oras bago mag hearing.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force: by mail to Administrator, Sunshine Ordinance Task Force, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-5163; or by e-mail at soft@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance may request a copy from the Sunshine Ordinance Task Force Administrator or by printing Chapter 67 of the San Francisco Administrative Code on the internet at www.sfgov.org/sunshine.

LOBBYING ACTIVITY/CAMPAIGN CONTRIBUTIONS

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102; telephone: (415) 252-3100; email ethics.commission@sfgov.org; web site www.sfgov.org/ethics.

Under Campaign and Governmental Conduct Code Section 1.127, no person or entity with a financial interest in a land use matter pending before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, may make a campaign contribution to a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of those offices, from the date the land use matter commenced until 12 months after the board or commission has made a final decision or any appeal to another City agency from that decision has been resolved. For more information about this restriction, visit sfethics.org.

SUGGESTIONS TO IMPROVE EFFICIENCY

The Board welcomes suggestions from the public regarding improvement of the efficiency of its operations. Please direct your comments and suggestions to Board staff, at boardofappeals@sfgov.org or (628) 652-1150. A customer satisfaction survey form is available at the meetings, the Board office, and on the Board's web site, www.sfgov.org/boa.

ONLINE VIDEO STREAMING OF MEETINGS

Online video streaming and audio and video file downloads of Board meetings are available at: https://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6.

BOARD OF APPEALS CITY & COUNTY OF SAN FRANCISCO

49 South Van Ness Avenue, Suite 1475
San Francisco, California 94103

The Board's physical office is open to the public by appointment only. Please email boardofappeals@sfgov.org or call 628-652-1150 if you would like to meet with a staff member.