

JURISDICTION REQUEST

Date **OCT 02 2012**

Filed: **APPEAL # J.R.**

Date of request: 10/02/12

United Taxicab Workers (requestor) hereby seeks a new appeal period for the following departmental action: for purpose of involving subject matter jurisdiction over SFMTA Resolution #12-115 for issuance of

(Building Permit Application; ZA determination or variance decision; DPW Order etc...) 150-200

issued to _____ for property at temporary full-time medallions

_____ , that was issued or became effective

on 9/04/12 , and for which the appeal period ended at close of business

on 9/19/12

Your **JURISDICTION REQUEST** will be considered by the Board of Appeals on Wednesday, Oct. 24, 2012 at **5:00 p.m.** City Hall, Room 416, One Dr. Carlton B. Goodlett Place.

Pursuant to Article V, § 10 of the Board Rules, the **RESPONSE** to the written request for jurisdiction must be submitted by the permit/variance/determination holder(s) or Department SFMTA no later than **10 days from the date of filing, on or before** Oct. 12, 2012, and must not exceed six (6) pages in length, with unlimited exhibits. An original and 10 copies shall be submitted to the Board office with additional copies delivered to the opposing parties the same day.

You or your representative **MUST** be present at the hearing. Three (3) minutes of testimony from each party, ie, the requestor, the permit holder, and the department(s) will be allowed. Your testimony should focus on the reason(s) you did not file on time, and why the Board should allow a late filing in your situation.

Based upon the evidence submitted and the testimony, the Board will make a decision to either grant or deny your Jurisdiction Request. Four (4) votes are necessary to grant jurisdiction. If your request is denied, an appeal may not be filed and the decision of the department(s) is final. If your request is granted, **a new five (5) – day appeal period shall be created which ends on the following Monday**, and an appeal may be filed during this time.

Address, Tel. & Fax:

UNITED TAXICAB WORKERS
2940 16th St. # 314
SAN FRANCISCO, CA 94103
415-606-1106

Maria Gallegos
Signature of Requestor or Agent

These are only general guidelines. If you have any questions or concerns, please call this office as soon as possible at 575-6880 during regular business hours.



CONTACT INFORMATION FOR PARTIES

Appeal No(s): _____ BOARD OF APPEALS

OCT 02 2012

APPELLANT(S) Name: U.T.W. APPEAL # J.R.

Phone Number: _____ Fax Number: _____

Email Address: _____

Mailing Address: _____
Street City State Zip

Names of Other Appellants: _____

Agent for Appellant

Name: MARK GAUBERG

Phone Number: 415-606-1106 Fax Number: 415-864-8295

✓ Email Address: MARK1106@ATT.NET

Mailing Address: _____
Street City State Zip

OTHER PARTY (PERMIT HOLDER, VARIANCE HOLDER, ETC.)

Name: SEMTA DTAS c/o J. Munny

Phone Number: _____ Fax Number: _____

Email Address: _____

Mailing Address: _____
Street City State Zip

Names of Other Parties: _____

Agent for Other Party

Name: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Mailing Address: _____
Street City State Zip

UNITED TAXICAB WORKERS

2940 Sixteenth St., Suite 314, San Francisco, CA 94103-3682
Affiliated With Communications Workers of America, AFL-CIO

September 27, 2012

Board of Appeals
1650 Mission St. Suite 304
San Francisco, CA 94103

BOARD OF APPEALS
OCT 02 2012
~~APPEAL #~~ J.R.

Dear Board of Appeals:

Please be advised that Mark Gruberg is authorized to act as our agent in an appeal of the SFMTA's decision of Sept. 4 to issue 150-200 taxi medallions to cab companies.

Yours,



Ruach Graffis
Acting Chair

UNITED TAXICAB WORKERS

2940 Sixteenth St., Suite 314, San Francisco, CA 94103-3682
Affiliated With Communications Workers of America, AFL-CIO

September 27, 2012

Chris Hwang, President, and Members
Board of Appeals
1650 Mission St., Room 304
San Francisco, CA 94103

BOARD OF APPEALS

OCT 02 2012

Dear President Hwang and Board Members:

APPEAL # _____

I. Introduction

On September 4, 2012, the Board of Directors of the San Francisco Municipal Transportation Agency ("Board of Directors" and "SFMTA" respectively) approved Resolution No. 12-115, authorizing the Director of Transportation to "issue 150-200 temporary full-time taxi medallions for a limited period of time, to be leased directly to certain color schemes [taxi companies] based upon objective dispatch criteria". (Exhibit A; bracketed words added.) According to supporting materials presented to the Board of Directors, the contemplated period of "temporary" issuance will be three years, during which time the SFMTA expects to realize between \$10.3 and \$13.7 million in lease fees. (Ex. B, p. 7, l. 1-3, 30-36.)

On September 18, 2012, United Taxicab Workers, a voluntary association of San Francisco cab drivers, including drivers on the Waiting List for taxi medallions ("Waiting List"), sought to file a Preliminary Statement of Appeal at the office of the Board of Appeals ("Board"). (Ex. C.) Executive Director Cynthia G. Goldstein informed us in person and by letter dated September 18, 2012 that the Board lacked jurisdiction over the appeal. (Ex. D.) We dispute that assertion. Accordingly, we are submitting this Request to the Board to assume jurisdiction. The Request is timely in that our initial appeal was submitted within 15 days of the Board of Directors' decision, and this submission is being filed prior to the effective date of the decision, which is October 4, 2012.

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II. Grounds of Appeal

Although the merits of our appeal are not at issue in this proceeding, we contend that the decision in question was an unauthorized exercise of regulatory authority in blatant violation of Transportation Code Division II Section 1105(a)(2)(B), which states: “No Taxi or Ramp Taxi Medallion shall be issued except to a natural person and in no case to any business, firm, partnership, association or corporation, and no Medallion shall be issued to, or in the name of, more than one person.” (Ex. E.) Furthermore, we contend the decision was unjustified and unfounded in that (1) the Board of Directors failed to await the results of an SFMTA-commissioned study currently being conducted on the adequacy of taxi service and what might be done to improve it; (2) the decision was based upon a perfunctory and deeply flawed report rife with outdated and misleading information; (3) other possible options for improving service, such as issuing medallions to cab drivers who have been on the waiting list for up to 17 years, or issuing part-time medallions that could provide the same level of service while doing much less harm to the environment and drivers’ income, were excluded from consideration in violation of Transportation Code Division II, Section 1115 (Ex. F.); and (4) the SFMTA suffers from an inherent conflict of interest between its regulatory responsibilities and its revenue-generating powers, as a result of which its decision to lease medallions to cab companies without considering sounder alternatives was motivated by financial gain.

III. The Grounds for the Board’s Jurisdiction Lie in the City Charter

Section 4.106(b) of the San Francisco Charter guarantees the right to appeal to the Board to any person (with limited exceptions not here applicable) “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 . . .” (Ex. G.) We contend the issuance of medallions to cab companies adversely affects taxi drivers’ interests, and – assuming, *arguendo*,

that a sufficient basis exists for the issuance of new medallions -- constitutes an unlawful denial of the permits in question to persons on the Waiting List.

In rejecting the appeal, Executive Director Goldstein cites Charter Section 8A.101(b), which provides the basis for the SFMTA's regulatory authority over the taxi industry. (Ex. H.) Proposition A's pertinent taxi language states: "In order to fully integrate taxi-related functions into the Agency . . . 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 (*sic*) all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations." These provisions were part of a lengthy Charter Amendment, Proposition A, passed by the voters in the November 2007 election. As described in the official Digest of the measure contained in the Voter's Handbook ("Digest"), "Proposition A is a Charter Amendment that continues the existing service and performance standards for Muni, and expands the MTA's authority over its operations and additional funding." (Ex. I, Digest.) The Proposition's taxi provisions are not even mentioned in the Digest. In the many pages official and paid arguments that follow, some aspects of the measure's taxi provisions are discussed, but there is no reference to any purported loss of the right to appeal taxi permit decisions. (Ex. I, Arguments.)

The taxi language of Proposition A serves to consolidate regulatory authority over taxi operations, formerly divided between the Taxi Commission and the Board of Supervisors, into the SFMTA, in a similar manner to the consolidation of authority over Muni operations. The "exclusive authority" granted the SFMTA is specific to "taxi-related functions and taxi-related fares, fees, charges, budgets, and personnel". The wording does not touch upon the *legal* right of persons aggrieved by permit decisions to appeal to the Board, a right conferred upon *all* such persons under Charter Section 4.106(b), with limited and explicit exceptions. Had the intention

been to override the provisions of Section 4.106(b) with respect to taxi permit appeals, depriving potential appellants of an invaluable right, such a provision could and should have been included in Proposition A. That, however, would have raised serious constitutional questions, as well as issues of fairness that might well have caused the voters to reject the measure. But in fact, Proposition A is silent about appeals of permit decisions. To imagine the voters intended to strip away this fundamental right is quite farfetched.

Sections 4.106(b) and 8A.101(b) are co-equal sections of the City Charter. If there is any seeming conflict between them, it is a well-settled principle of law that the provisions in question are to be construed so as to maintain the integrity of both and harmonize their effect. (*Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, 38 Cal.Rptr.3rd 395.) The provisions are easily reconcilable in that Section 4.106(b) deals specifically with permit appeals while Section 8A.101(b) provides general regulatory authority over the taxi industry.

If, however, the language of Proposition A were to be construed to deny the right to appeal taxi permit decisions to this Board, it would apply to *all* such appeals. That has not been the case. The Board has heard and decided numerous appeals by taxi drivers on permit decisions since the passage of Proposition A. There is no meaningful distinction, except in scope, between the right of appeal on an individual permit and the right to appeal a decision to issue a large number of permits. If anything, the importance of the appeal right is magnified by the number of permits involved.

IV. The Police Code Provides Additional Authority for the Right of Appeal

The right to appeal both types of permit decisions is further codified in Police Code Article 16, Section 1079. (Ex. J.) The section provides, *inter alia*, that a determination of “public convenience and necessity” authorizing the issuance of additional permits may be appealed to this Board. (Police Code, Article 16, Section 1179(g).) Elements of the section have been incorporated in Transportation Code Section 1115, adopted together with numerous

other taxi-related amendments to the Transportation Code on May 19, 2009. (Ex. F.) The new section does not mention the right of appeal. The supporting materials presented to the Board of Directors with regard to Section 1115 discuss a change in terminology (hearings to determine the need for more cabs are no longer denominated “public convenience and necessity” proceedings), but do not allude to any elimination of the appeal right. (Ex. K, p. 8, l. 4-14.) The failure to bring to the public’s attention a potential change of that significance and controversial effect would either be a major oversight or deliberate obfuscation, if that were indeed the intention of the section. But the simpler explanation is that elimination of appeals was never intended.

As noted above, under Charter Section 8A.101(b), newly adopted regulations supersede previously existing provisions only if they conflict with or duplicate those provisions. Though we contend that the right of appeal is foremost founded in the Charter, unless and until Police Code Section 1079(g) is repealed, to the extent its provisions have not been superseded they continue to be operative as provided in Charter Section 8A.101(b).

In rejecting our appeal, Executive Director Goldstein seeks to explain the Board’s continuing exercise of jurisdiction over individual permit appeals by reference to Police Code Article I, Section 2.13. That section states: “Whenever an application for any permit provided for in this code shall be denied or an existing permit revoked or suspended, the person aggrieved shall have the right to appeal to the Board of Permit Appeals from such denial, revocation or suspension.” (Ex. L.) That section provides a further basis for this appeal. As noted above, the issuance of medallions to cab companies is a *de facto* denial of those same medallions to individual applicants, who are designated as the exclusive recipients of medallions under Transportation Code Section 1105(a)(2)(B).

On June 5, 2012, staff brought to the Board of Directors a proposal to recommend to the Board of Supervisors the repeal of most of the taxi-related sections of Article 16 of the Police Code, including Section 1079. Supporting materials presented to the Board of Directors in

connection with the repeal recommendation state: "The proposed ordinance would have the effect of removing the jurisdiction of the Board of Appeals from taxi permit hearings, which had been granted by ordinance in the Police Code and is not reproduced in the attached amendments to Division H of the Transportation Code." (Ex. M, numbered p. 3, l. 2-4; see also introductory page, last par.) Although the SFMTA Board recommended the repeal of the remaining taxi provisions of the Police Code, after hearing vehement objections from the public, Director of Transportation Ed Reiskin and Director Malcolm Heinicke committed to revisiting the right of appeal at a later time. (Public Hearing, SFMTA Board, June 5, 2012, Items 14 and 15, SFGTV Video on Demand, at 3:13:59.) To date, the Board of Supervisors has not acted upon the repeal recommendation, so the Police Code sections remain in effect. But should they be repealed, we strongly dispute the notion that it would affect this precious right, which is insulated from elimination by anyone but the voters.

V. Conclusion

The right to an administrative appeal of taxi permit decisions has long been enshrined in the Charter and ordinances of the City and County of San Francisco. The voters were never presented with the option of eliminating that right, and have not done so. The right is especially valuable to cab drivers, who have limited resources for taking legal action against adverse decisions. And the right to an independent administrative appeal is particularly important when the regulating agency has a conflicting interest by virtue of its ability to extract revenues for its own purposes through its permitting powers. The thought that an unlawful and self-serving decision of this nature would be immune from administrative challenge is downright scary.

Respectfully submitted,



Mark Gruberg
Agent for United Taxicab Workers