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## 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from any person who "has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn .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.

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**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

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

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

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

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over taxi-related permit decisions, because Charter Section 8A.101(b) and Article 1100 of the Transportation Code superseded Charter Section 4.106(b).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

### Conclusion

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

# Memorandum

## Taxi Permit Appeals at the Board of Appeals



TO: Julie Rosenberg  
Executive Director, Board of Appeals

FROM: Jeffrey Tumlin   
Director of Transportation, SFMTA

CC: SFMTA Board of Directors

DATE: September 8, 2022

SUBJECT: Taxi Permit Appeals at the Board of Appeals

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

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

Thank you.

# PUBLIC COMMENT

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

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Dear Commissioners,

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

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

The long-anticipated Pilot Program in which San Francisco taxi drivers will have access to Uber's massive customer base has run into delays but is expected to begin this month. At a minimum, there should be a further continuance on the basis stated above.

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

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

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

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

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

Evelyn A Poquez  
Alliance Cab  
President and General Manager

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

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## Pursuit of elderly and disabled taxi medallions

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

To effect this policy they encountered three hurdles:

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

Several members of the Board are newly appointed, and taxi medallions revocations have a complex history. The history is important.

I hope this email is helpful in understanding it.

Sent from my iPhone



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

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

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# Update

Dear San Francisco Taxi Industry Member:

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

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

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

[SFMTA.com](http://SFMTA.com)



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