



[DRAFT]

January 4, 2023

Jeffrey Tumlin, Director of Transportation
San Francisco Municipal Transportation Agency
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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 At the outset, we want to thank you for your letter, dated December 5, 2022, wherein you rescinded the SFMTA's decision to discontinue the practice of allowing appeals of taxi permit decisions to be heard by the BOA.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 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.

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 think you would agree that the appearance of independence and impartiality are important tenets of due process and thus ask that these questions be considered as the SFMTA makes this decision.

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 principles 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 principles such as estoppel as they carry out important due process functions and allow the SFMTA to fulfill its legislative mandate under Article 11 of the Transportation Code. In our experience, 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 SFMTA’s comprehensive permit review and enforcement initiative undertaken in 2019 and 2020, we have found three such instances where principles of equity 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 SFMTA 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 principles in its analytical framework in order to reach a just outcome.

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).

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.

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