

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Amend Transportation Code, Division II, Section 305 to establish conditions for waiving and/or reimbursing individuals for SFMTA towing and storage fees.

SUMMARY:

- The current tow waiver and reimbursement policy currently resides in Administrative Code Chapter 10.C.
- The City Charter grants authority to the SFMTA Board of Directors for SFMTA fees and fines; therefore, all provisions under Chapter 10C of the Administrative Code, except provisions governing San Francisco Police Department tow fees, must be transferred Division II of the Transportation Code.
- On June 16, 2015, the SFMTA Board of Directors approved the extension of the towing contract and a policy for stolen vehicle waivers in response to a November 2014 Board of Supervisors Resolution urging the SFMTA to modify current two fee waiver conditions.
- The tow extension was approved by the Board of Supervisors on July 14, 2015. However, further discussion with the Board of Supervisors resulted in modifications to the stolen vehicle waiver policy that are included in the proposed Transportation Code amendment.
- The modifications will go into effect on December 1, 2015.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Amendment

APPROVALS:

DATE

DIRECTOR _____

8/10/15

SECRETARY _____

8/10/15

ASSIGNED SFMTAB CALENDAR DATE: August 18, 2015

PURPOSE

The purpose of this item is to amend Transportation Code, Division II, Section 305 to establish conditions for waiving and/or reimbursing individuals for SFMTA towing and storage fees.

GOAL

Approval of the Transportation Code amendment will support the following SFMTA Strategic goal and objective:

Goal #2 – Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel.

Objective 2.1 – improve customer service and communications.

DESCRIPTION

The current tow waiver and reimbursement policy currently resides in Administrative Code Chapter 10.C. However, the City Charter grants authority to the SFMTA Board of Directors to set SFMTA fees and fines. Therefore, tow waiver and reimbursement policies, except provisions governing San Francisco Police Department's administrative tow fee, should be transferred to Division II of the Transportation Code.

On June 16, 2015, the SFMTA Board of Directors authorized the extension of the towing contract and a new policy for stolen vehicle waivers in response to a November 2014 Board of Supervisors Resolution urging the SFMTA to review existing tow fee waiver conditions. The policy stated that contractor's towing and SFMTA administrative fees for both San Francisco residents and non-residents would be 100% waived, and provide a 72-hour grace period after storage before contractor's and administrative storage fees begin to accrue. The tow contract extension was approved by the Board of Supervisors on July 14, 2015; however, further discussion with the Board of Supervisors resulted in modifications to the policy, summarized below:

For a vehicle reported stolen prior to being towed or when the SFPD otherwise determined that the vehicle was stolen the SFMTA will 1) waive all contractor towing fees; 2) waive 100% of the SFMTA administrative tow fee for San Francisco residents and 50% of this fee for non-residents; 3) waive 100% of SFMTA administrative storage fees and 4) provide a 48-hour grace period after storage begins for San Francisco residents and a 24-hour grace period for non-residents before contractor's tow fees begin to accrue. These provisions will go into effect on December 1, 2015.

PUBLIC OUTREACH

Both the public and the Board of Supervisors have provided consistent feedback that paying for towing and storage fees for stolen vehicles is burdensome, and that some relief from this expense would mitigate the impact to victims of this crime. Feedback from the San Francisco Police Department (SFPD) indicated that their main concern in granting waivers for towing and storage fees is false reporting of stolen vehicles, and requested that the waiver only apply if the vehicle was reported stolen prior to being recovered, or if the SFPD otherwise determined that the vehicle was stolen.

Pursuant to Charter Section 16.112 and the Rules of Order of the Board of Directors, advertisements were placed in the City's official newspaper to provide notice that the Board of Directors will hold a public hearing on August 18, 2015 to consider the above modifications. In compliance with these requirements, the advertisement ran in the San Francisco Examiner for a five-day period beginning July 27, 2015.

ALTERNATIVES CONSIDERED

The alternative would be to not waive or reimburse towing and storage fees. However, there are instances when a car was towed as a result of administrative error or when the vehicle owner is not at fault for the tow so the option of waiving the fees is appropriate.

FUNDING IMPACT

Should the proposed waiver policy be adopted, the impact to the FY 2016 operating budget would be approximately \$226,000 because under the current towing agreement the SFMTA would have to reimburse the towing contractor for waiving its towing and storage fees. Stolen vehicle waiver costs under the new agreement will be calculated after successful completion of the current competitive procurement process, and submission of costs for services provided by the chosen contractor.

ENVIRONMENTAL REVIEW

Modifications to fares are subject to the California Environmental Quality Act (CEQA). The CEQA implementing guidelines provide an exemption from environmental review for the establishment, modification, structuring, restructuring or approval of rates, tolls, and other charges, if these rates, tolls, and other charges will be used to meet operating expenses, including employee wage rates and fringe benefits, or purchase or lease of supplies, equipment, or materials. (Cal. Code Regs., tit. 14, § 15273.)

The SFMTA, under authority delegated by the Planning Department, has determined that the proposed amendments to Transportation Code Section 305 are statutorily exempt from environmental review under Section 15273 of the CEQA guidelines. The SFMTA's determination is on file with the Secretary to the SFMTA Board of Directors. The proposed action is the Approval Action as defined by the S. F. Administrative Code Chapter 31.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this report.

RECOMMENDATION

The recommendation is to amend Transportation Code, Division II, Section 305 to establish conditions for waiving and/or reimbursing individuals for towing and storage fees.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The current tow waiver and reimbursement policy resides in Administrative Code Chapter 10.C while the City Charter grants the SFMTA Board of Directors authority over SFMTA fees and fines; therefore tow waiver and reimbursement provisions except provisions governing San Francisco Police Department's administrative tow fee, should be transferred to Division II of the Transportation Code; and,

WHEREAS, On June 16, 2015, the SFMTA Board of Directors authorized the extension of the towing contract and a new policy for stolen vehicle waivers in response to a November 2014 Board of Supervisors Resolution urging the SFMTA to review existing tow fee waiver conditions; and,

WHEREAS, The policy stated that contractor's towing and SFMTA administrative fees for both San Francisco residents and non-residents would be 100% waived, and provide a 72-hour grace period after storage before contractor's and administrative storage fees begin to accrue; and,

WHEREAS, The tow contract extension was approved by the Board of Supervisors on July 14, 2015; however, further discussion with the Board of Supervisors resulted in modifications to the stolen vehicle waiver policy; and

WHEREAS, The new conditions for stolen vehicle waivers are as follows: For a vehicle reported stolen prior to being towed or when the SFPD otherwise determined that the vehicle was stolen the SFMTA would 1) waive all contractor towing fees; 2) waive 100% of the SFMTA administrative tow fee for San Francisco residents and 50% of that fee for non-residents; 3) waive 100% of SFMTA administrative storage fees and 4) provide a 48-hour grace period after storage begins for SF residents and a 24-hour grace period for non-SF residents; and,

WHEREAS, The Transportation Code modifications will go into effect December 1, 2015; and,

WHEREAS, Modifications to fares are subject to the California Environmental Quality Act (CEQA); the CEQA implementing guidelines provide an exemption from environmental review for the establishment, modification, structuring, restructuring or approval of rates, tolls, and other charges, if these rates, tolls, and other charges will be used to meet operating expenses, including employee wage rates and fringe benefits, or purchase or lease of supplies, equipment, or materials. (Cal. Code Regs., tit. 14, § 15273.); and,

WHEREAS, The SFMTA, under authority delegated by the Planning Department, has determined that the proposed amendments to Transportation Code Section 305 are statutorily exempt from environmental review under Section 15273 of the CEQA guidelines; the proposed action is the Approval Action as defined by the S. F. Administrative Code Chapter 31; and

WHEREAS, Pursuant to Charter Section 16.112 and the Rules of Order of the Board of Directors, advertisements were placed in the City's official newspaper, the San Francisco Examiner, for a five-day period beginning July 27, 2015 to provide notice that the Board of Directors will hold a public hearing on August 18, 2015 to consider the above modifications; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amends Transportation Code, Division II, Section 305 to establish conditions for waiving and/or reimbursing individuals for SFMTA towing and storage fees.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 18, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

RESOLUTION NO.

[Transportation Code - Reimbursement and Waiver of Towing and Storage Fees]

Resolution amending the Transportation Code to authorize the waiver or reimbursement of fees related to towing and storage of vehicles when the vehicle was towed to inspect it for evidence of a crime; the vehicle was mistakenly towed; the vehicle tow was incorrectly reported, filed or recorded; the vehicle was towed for the removal of component parts; or the vehicle was a stolen vehicle that was recovered in San Francisco.

NOTE: Additions are single-underline Times New Roman;
deletions are ~~strike-through Times New Roman~~.

The Municipal Transportation Agency Board of Directors of the City and County of San Francisco enacts the following regulations:

Section 1. Article 300 of Division II of the Transportation Code is hereby amended by revising Section 305, to read as follows:

SEC. 305. TOWING AND STORAGE ~~ADMINISTRATIVE~~ FEES.

(a) Fees. The SFMTA shall charge the owner of a towed vehicle a fee in the amount of \$263.00 effective July 1, 2014, and \$266.00 effective July 1, 2015, to reimburse the City for administrative costs related to the removal, impound, or release of vehicles towed from the public right-of-way. In addition, the SFMTA shall charge the vehicle owner a fee to reimburse the City for administrative costs related to the storage of such towed vehicles in the amount of \$2.75 effective July 1, 2014, and \$3.00 effective July 1, 2015, for the first day of storage (24 hours or less), and \$3.25 effective July 1, 2014, and \$3.50 effective July 1, 2015, for each day, or part thereof, that the vehicle remains in storage after the first 24 hours. The administrative fees imposed pursuant to this ~~S~~subsection (a) shall be in addition to the fee charged by a tow car operator to the owner of a towed vehicle for the costs of towing and

storing the vehicle. The administrative fees imposed pursuant to this §subsection shall not be taken into account in determining the maximum fee that may lawfully be charged by the tow car operator to the owner of a removed vehicle, nor shall the administrative fees imposed pursuant to this §subsection be taken into account in determining whether a fee charged by the tow car operator to the owner of a removed vehicle is excessive as a matter of law.

(b) Reimbursement and Waiver of Towing and Storage Fees.

(1) Except as provided in subsection (c), below, any fees imposed or authorized by the SFMTA in connection with the towing or storage of vehicles, or the amount charged for removal of components of a vehicle, may be waived for, or reimbursed to, the registered or legal owner of the vehicle if the fees were incurred:

(A) Because the vehicle was towed or stored by order of the San Francisco Police Department to examine the vehicle for evidence of a crime;

(B) Because the vehicle was towed and stored by order of the San Francisco Police Department or the SFMTA and said towing or storage was not authorized by state or local law;

(C) Because the San Francisco Police Department or the SFMTA erroneously reported, filed, or recorded the circumstances of the towing or storage of the vehicle; or

(D) Because the vehicle was towed or stored by order of the San Francisco Police Department or the SFMTA for removal of components of the vehicle, which components were placed on the vehicle in violation of Section 10751 of the Vehicle Code.

(2) Upon verifiable proof that the vehicle was reported stolen before it was towed, or upon a determination by the San Francisco Police Department that the vehicle was stolen, the SFMTA shall waive, if the vehicle owner is an individual:

(A) All of its administrative fee related to the removal, impound, or release of the vehicle (see subsection (a), above) if the vehicle owner is a San Francisco resident, and 50% of such fee if the vehicle owner is a non-resident;

(B) Its administrative fee related to the storage of the towed vehicle (see subsection (a), above);

(C) The City Contractor's fees related to the removal, impound, or release of the towed vehicle; and

(D) The City Contractor's storage fees that would otherwise accrue during the first 48 hours that the vehicle is stored if the vehicle owner is a San Francisco resident, and the Contractor's storage fees that would otherwise accrue during the first 24 hours that the towed vehicle is stored if the vehicle owner is a non-resident.

(c) Indigent Owner.

(1) Should the owner of the vehicle or one in lawful possession sign an affidavit, under penalty of perjury, that said person is indigent and does not immediately have the funds to pay the accrued towing, storage, or removal of component fee, the Director of the SFMTA or his or her designee shall immediately make such investigation as necessary to ascertain if said indigent person is entitled to immediate possession of his or her vehicle without the payment of the fees incurred for towing, storage, or removal of component parts of said vehicle.

(2) Should the Director of the SFMTA or his or her designee, after an investigation, decide that the towing, storage, or removal of the component parts of a vehicle comes within the provisions of subsections (b)(1) or (2), above, and the owner of the vehicle or one in lawful possession signs an affidavit of indigency, the Director of the SFMTA shall issue a waiver directed to the person, firm or corporation having custody of the vehicle. Said affidavit shall be on a form approved by the Director of the SFMTA.

(3) Upon presentation of this waiver to the person, firm, or corporation having custody of the vehicle, the vehicle shall be repossessed by the person presenting the waiver, without further payment.

(4) The person, firm or corporation receiving the waiver may present the waiver to the office of the SFMTA designated by its Director for payment of the fees stated on the waiver.

(d) Prohibition on Waiver and Reimbursement of Towing and Storage Fees. No reimbursement or waiver shall be made to the registered or legal owner of a vehicle pursuant to the provisions of subsection (b)(1) or (2), above, if:

(1) The owner or person in lawful possession of the vehicle is chargeable with violation of any law of the City and County of San Francisco, the State of California, or the United States, and said charge relates to the towing and storage of the vehicle or the removal of component parts thereof; or

(2) Reimbursement or waiver is requested pursuant to subsections (b)(1)(B) or (b)(1)(C), above, and the City's error in ordering, reporting, filing or recording the tow is attributable, in part, to the conduct of the registered owner, legal owner, or one in lawful possession of the vehicle; or

(3) The registered or legal owner of the vehicle, including a firm or corporation that owns vehicles used for commercial purposes, cannot show evidence of financial responsibility for said vehicle as required by Section 16020 of the California Vehicle Code.

(e) Application for Reimbursement or Waiver.

(1) Requests for reimbursement or waiver must be presented to the Director of the SFMTA or his or her designee, on a form provided therefor, within 30 days of the date of the tow of the vehicle. The Director, or his or her designee, may, in his or her sole discretion, extend this deadline for good cause shown.

(2) Requests for reimbursement or waiver shall be itemized, describing all circumstances known to the requesting party. The Director of the SFMTA or his or her designee may request such additional information as necessary to determine the legitimacy of the request for reimbursement or waiver.

(3) All requests for reimbursement or waiver shall be made under penalty of perjury.

(4) The amount of the requested reimbursement or waiver shall not exceed the actual fees charged to the individual or entity requesting reimbursement or waiver.

(f) Prosecution of Person Responsible. No request for reimbursement or waiver shall be considered by the Director of the SFMTA or his or her designee unless and until the person requesting reimbursement or waiver agrees in writing that said person will fully cooperate in the investigation or prosecution of any person or persons responsible for any violation of law giving rise to the request for reimbursement or waiver.

(g) Subrogation. Whenever reimbursement or waiver is made pursuant to this Section 305, the City and County of San Francisco is subrogated to all rights and privileges, at law or equity, of the person, or his or her heirs or assigns, to whom payment was made to recover any monies, from any source whatsoever, due to the person requesting reimbursement or waiver arising from the activity that caused the fees to be incurred.

(h) Procedures. The Director of Transportation may establish such procedures as he or she deems appropriate to facilitate the waiver and reimbursement of towing and storage fees in accordance with this Section 305.

Section 2. Effective and Operative Dates. This ordinance shall become effective 31 days after enactment. Enactment occurs when the San Francisco Municipal Transportation Agency Board of Directors approves this ordinance. This ordinance shall become operative on December 1, 2015.

Section 3. Scope of Ordinance. In enacting this ordinance, the San Francisco Municipal Transportation Agency Board of Directors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Transportation Code that are explicitly shown in this ordinance as additions or deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Mariam M. Morley
Deputy City Attorney

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 18, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency