

THIS PRINT COVERS CALENDAR ITEM NO. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting that the Board of Directors amend Transportation Code Division II, Article 1100, Sections 1101, 1102 and 1103 to remove references to Non-Standard Vehicles, to update the definition of Motor Vehicle for Hire to specifically exclude Non-Standard Vehicle, to amend Article 1100, Section 1113 to update taxi vehicle age and mileage requirements, to amend Article 1100, Sections 1117, 1119 and 1120 to consolidate certain hearing procedures applicable to taxi proceedings, and to correct a minor, non-substantive numbering error in Article 1100, Section 1116.

SUMMARY:

- If adopted, Transportation Code Division II, Article 1200 will establish regulation of Non-Standard Vehicles, including Private Transit Vehicles (PTV). References to Non-Standard Vehicles, therefore, will need to be removed from Article 1100.
- Taxi vehicle age and mileage requirements are being updated to allow more flexibility to add and continue operating vehicles, while maintaining a focus on clean air standards.
- Taxi hearing proceedings regarding the denial of a permit application will be consolidated with the administrative hearing procedures set forth in Section 1120. In addition, the standard of review for administrative hearings for non-permit holders and taxi permit holders are governed by California Code of Civil Procedures Sections 1094.5 and 1094.6. This is the only vehicle for judicial review of quasi-judicial administrative decisions. This amendment will correct the erroneous reference to the California Government Code in Section 1119
- Additionally, there is a non-substantive numbering error that will be corrected.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Division II Amendments

APPROVALS:

	DATE
DIRECTOR 	9/19/2017
SECRETARY 	9/19/2017

ASSIGNED SFMTAB CALENDAR DATE: October 3, 2017

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PURPOSE

Requesting that the Board of Directors amend Transportation Code Division II, Article 1100, Sections 1101, 1102 and 1103 to remove references to Non-Standard Vehicles, to update the definition of Motor Vehicle for Hire to specifically exclude Non-Standard Vehicle, to amend Article 1100, Section 1113 to update taxi vehicle age and mileage requirements, to amend Article 1100, Sections 1117, 1119 and 1120 to consolidate certain hearing procedures applicable to taxi proceedings, and to correct a minor, non-substantive numbering error in Article 1100, Section 1116.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action will support the following goals and objectives in the SFMTA's Strategic Plan:

Goal 1: Create a safer transportation experience for everyone.

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

Objective 2.1: Improve customer service and communications.

Objective 2.3: Increase use of all non-private auto modes.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.4: Deliver services efficiently.

This action will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

Requesting that the Board of Directors amend Transportation Code Division II, Article 1100, Sections 1101, 1102 and 1103 to remove references to Non-Standard Vehicles, to update the definition of Motor Vehicle for Hire to specifically exclude Non-Standard Vehicle, to amend Article 1100, Section 1113 to update taxi vehicle age and mileage requirements, to amend Article 1100, Sections 1117, 1119 and 1120 to consolidate certain hearing procedures applicable to taxi proceedings, and to correct a minor, non-substantive numbering error in Article 1100, Section 1116.

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BACKGROUND

The proposed amendments enumerated in this calendar item report should be considered in conjunction with the proposed permit program for Private Transit Vehicles, established in Transportation Code Division II, Article 1200, which is before the SFMTA Board for approval as a separate calendar item. Currently, Article 1100 includes a definition of Non-Standard Vehicles along with a basic regulatory framework. Because the regulatory framework has been expanded and is included in Article 1200, the references to Non-Standard Vehicles should be eliminated from Article 1100. This will provide consistency and streamline the Non-Standard Vehicle regulations, which include regulations of Private Transit Vehicles, into Article 1200.

Currently, Article 1100, Section 1113 requires that a taxi vehicle have fewer than 100,000 miles in order to be part of the taxi fleet and that a vehicle must be less than nine model years to operate as a taxi. Over the past several years the taxi industry has experienced a decline in the demand for taxi service which has resulted in taxis incurring fewer service miles per year which extended the useful life of a taxi beyond what was contemplated when Section 1113 was originally drafted. In order to level the playing field, while maintaining a focus on clean air requirements and safety, staff is proposing to eliminate the requirement that vehicles have less than 100,000 miles upon introduction into the fleet and allow a vehicle to remain in the fleet beyond nine model years; provided that vehicles nine model years or older must pass a vehicle safety inspection every six months. The San Francisco taxi fleet is among the 'greenest' in the country, with approximately 96% of the fleet operating low emission vehicles. This status will not be impacted by the proposed change. The safety of the fleet will be maintained with the requirement of semi-annual inspections of all vehicles nine model years or older along with the continued annual inspections required for all vehicles less than nine model years.

Hearing procedures applicable to taxi proceedings are established in Sections 1117 through 1120. In order to consolidate and streamline certain of the hearing procedures established in Sections 1117, 1119 and 1120, staff is proposing revisions to Sections 1117, 1119 and 1120. The hearing procedures in Section 1117 regarding the denial of a permit application have been consolidated with the administrative hearing procedures set forth in Section 1120. The updated hearing procedures also establish the correct standard of review in Section 1119, Administrative Fines Assessed Against Non-Permit Holders. In Section 1119, the hearing procedures currently have an incorrect reference to the California Government Code and therefore staff is proposing to correct the reference, instead citing California Code of Civil Procedure. The standard of review under this statute is "abuse of discretion" which means the judge will not overturn an Agency decision unless the person appealing can establish that the Agency abused its discretion-meaning the hearing officer failed to exercise sound, reasonable, and legal decision making.

There is also a minor numbering correction in Section 1116.

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STAKEHOLDER ENGAGEMENT

The Non-Standard Vehicle regulations were presented at the March Taxi Task Force meeting, the taxi vehicle age and mileage requirements were vetted with the Taxi industry at the July and August Taxi Task Force meetings, and the taxi hearing procedures were discussed at the August Taxi Task Force meeting. Some Taxi Task Force members raised concerns about the new type of service that could be a competitor to the taxi industry. No revisions were made to the PTV permit program based on this feedback. Staff vetted vehicle age amendments with the Taxi Task Force at the July meeting, and the members were generally supportive and requested that staff review the vehicle mileage requirements as well. After internal discussions, staff decided to amend the requirement regarding the maximum allowable mileage a vehicle can have upon introduction into the taxi fleet. The proposed language was vetted with the Taxi Task Force, and there was general approval. One Taxi Task Force member additionally requested that staff review the maximum allowable mileage for a vehicle to remain in the taxi fleet. Staff discussed and decided to not recommend changes to the 375,000 maximum mileage requirement to remain in the taxi fleet. To address concerns about possible vehicle condition and emissions issues after removal of model year requirements, staff increased inspection frequency requirements. Changes to the hearing procedures were discussed and no substantive comments were received. Staff emailed the proposed hearing procedure amendments to the Taxi Task Force members as well, to provide additional opportunity for review.

ALTERNATIVES CONSIDERED

The proposed amendments to Article 1100 must conform to the proposed regulatory framework established in Article 1200, so no alternatives have been considered.

Alternative vehicle age and mileage requirements were considered by staff and discussed with the Taxi Task Force. Staff considered amendments solely to the vehicle age, but based on feedback from industry stakeholders, vehicle introduction mileage requirements were included as well.

FUNDING IMPACT

There is no anticipated funding impact related to the proposed amendments.

ENVIRONMENTAL REVIEW

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On August 11, 2017, the Municipal Transportation Agency determined that the proposed Transportation Code Amendments are not a “project” for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

The Agency’s determination is on file with the Secretary to the SFMTA Board of Directors.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board approve amendments to Transportation Code Division II, Article 1100, Sections 1101, 1102 and 1103 to remove references to Non Standard Vehicles, to update the definition of Motor Vehicle for Hire to specifically exclude Non Standard Vehicle, to amend Article 1100, Section 1113 to update taxi vehicle age and mileage requirements, to amend Article 1100, Sections 1117, 1119 and 1120 to consolidate certain hearing procedures applicable to taxi proceedings, and to correct a minor, non-substantive numbering error in Article 1100, Section 1116.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, A permit program to regulate Private Transit Vehicles (PTV) under the Non-Standard Vehicle regulatory framework in the newly drafted Transportation Code Division II, Article 1200 is before the SFMTA Board for approval; and,

WHEREAS, If adopted, Article 1200 will establish regulation of Non-Standard Vehicles, including Private Transit Vehicles; and,

WHEREAS, The adoption of Article 1200 will necessitate the removal of references to Non-Standard Vehicles from Article 1100; and,

WHEREAS, Approximately 96% of the San Francisco Taxi fleet operates low emission vehicles; and,

WHEREAS, Taxi vehicle age and mileage requirements are being updated to allow more flexibility to add and continue operating vehicles, while maintaining a focus on clean air standards; and,

WHEREAS, The hearing procedures listed in Section 1119 currently have an incorrect reference to the California Government Code; and,

WHEREAS, Judicial review of administrative hearing decisions related to non-permit holders is governed by California Code of Civil Procedures Sections 1094.5 and 1094.6; and

WHEREAS, Section 1119 will be amended to remove the erroneous reference to the California Government Code; and,

WHEREAS, There is a minor numbering error in Section 1116; and,

WHEREAS, On August 11, 2017, the Municipal Transportation Agency, under authority delegated by the Planning Department, and with the concurrence of the Planning Department, determined that the proposed changes to fees and fines are statutorily exempt from environmental review under California Public Resources Code section 21080(8) and the CEQA implementing guidelines because the anticipated revenues will be used to meet City and County of San Francisco operating expenses, including employee wage rates and fringe benefits, or to purchase or lease supplies, equipment, or materials, or to obtain funds for capital projects necessary to maintain service within existing service areas; now, therefore, be it

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RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amends Transportation Code, Division II, Article 1100 to remove references to Non-Standard Vehicles, to eliminate the requirement that vehicles have less than 100,000 miles upon introduction to the fleet, to eliminate the model year limitation, to amend certain hearing procedures and make a correction in the numbering of Section 1116.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 3,2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

[Transportation Code – Taxi Administrative Hearings]

Resolution amending the Transportation Code to remove references to Non-Standard Vehicles and to update the definition of Motor Vehicles for Hire; update taxi vehicle age and mileage requirements; consolidate hearing procedures related to denial of a permit with administrative hearing procedures; and correct non-substantive errata in Section 1116.

NOTE: Additions are single-underline Times New Roman; deletions are ~~strike-through Times New Roman~~. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Article 1100 of Division II of the Transportation Code is hereby amended by revising Sections 1101, 1102, 1103, 1113, 1116, 1117, 1119, and 1120, to read as follows:

Sec. 1101. SCOPE AND PURPOSE OF REGULATIONS.

(a) Scope of Regulations.

(1) Classes of Permits. This Article 1100 shall apply to the following classes of permits issued by the SFMTA:

(A) Permits issued to a person:

(i)——Driver Permits.

(B) Permits issued to a person for use with an identified vehicle or

vehicle(s):

(i)——Taxi/Ramp Taxi Medallions.

(ii)——~~Non-Standard Vehicle Permits.~~

- (C) Permits issued to a business that affiliates with permitted vehicles:
 - (i) Color Scheme Permits.
 - (ii) Dispatch Service Permits.

* * * *

SEC. 1102. DEFINITIONS.

* * * *

"Model Year" shall mean a model year designated by the manufacturer at the time of first assembly as a completed vehicle.

"Motor Vehicle for Hire" shall mean every type of privately owned motor vehicle, as defined in the Vehicle Code, which is available for hire and over which the City may exercise jurisdiction, except as otherwise specified in this Article 1100. For purposes of this Article, "Motor Vehicle for Hire" shall not include Non-Standard Vehicle as defined in Section 1202 of this Code.

"Motor Vehicle for Hire Permit" shall mean a permit issued by the SFMTA for the operation of an identified vehicle for the purpose of transporting passengers for a price, including Taxi or Ramp Taxi Medallions ~~and Non-Standard Vehicle permits~~, and does not include Dispatch Service, Color Scheme, ~~or Driver~~, or Non-Standard Vehicle Permits.

~~**"Non-Standard Vehicle"** shall mean a privately owned, motor propelled passenger carrying vehicle which may be legally operated on the streets of the City under all applicable state and local laws and regulations, and which is not defined elsewhere in this Article.~~

* * * *

SEC. 1103. PERMIT APPLICATIONS AND RENEWAL.

* * * *

- (e) ~~**Requirements Applicable to Non-Standard Vehicle Permit Applications.**~~

~~(1) — An applicant may request a Non Standard Vehicle class of permit for any vehicle(s) not otherwise included within another class of Motor Vehicle for Hire permits.~~

~~(2) — If a Non Standard Vehicle permit applicant proposes to operate along fixed routes within the City, such fixed routes shall be specified in the permit application. Fixed routes proposed for a permit must be approved by the SFMTA and shall be included in the Non Standard Vehicle permit as a permit condition. Consideration of such routes by the SFMTA shall include evaluation of their impact on public transit. Reserved.~~

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SEC. 1113. TAXI AND RAMP TAXI EQUIPMENT REQUIREMENTS.

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(q) **Vehicle Mileage.** ~~Starting mileage may not be more than 100,000 miles when a vehicle is placed into service. No vehicle may be operated as a Taxi or Ramp Taxi after the vehicle has reached 375,000 miles.~~

(r) **Vehicle Age.** No vehicle older than seven Model Years may be placed into service as a Taxi or Ramp Taxi vehicle, ~~and no vehicle older than nine model years may remain in service as a Taxi or Ramp Taxi vehicle.~~

(s) **Inspections.**

(1) **Inspection Required.** All Taxis and Ramp Taxis shall be inspected by the SFMTA or its designee, every six months if they are used as spare vehicles, ~~or have 200,000 miles or more on the odometer, or if the vehicle is older than nine Model Years,~~ and every 12 months for regular vehicles, at a date and time designated by the SFMTA, and at any other time deemed necessary by the SFMTA. At the time of a scheduled inspection of the vehicle, the Color Scheme or Taxi or Ramp Taxi Medallion Holder must provide the following:

* * * *

SEC. 1116. TAXI MEDALLION TRANSFER PROGRAM.

* * * *

(l) **Foreclosure and Retransfer of Transferable Medallions.**

(1) **Foreclosure.** If the Transferee defaults under the agreement with the Qualified Lender beyond any applicable notice and cure period, notwithstanding any other provisions herein to the contrary, the Qualified Lender may foreclose upon its security interest and possess the foreclosed, Transferable Medallion as an owner of the Transferable Medallion with full right, title, and interest thereto, except that Lender shall not be permitted to operate the Medallion. If the Qualified Lender intends to foreclose on the security interest, the qualified Lender shall notify the SFMTA without delay once the Qualified Lender determines the date on which it intends to foreclose. The notice shall include the name of the Medallion Holder, the intended date of foreclosure, and the contact information for the representative of the Qualified Lender to whom inquiries may be made.

(2) **Retransfer.** Provided that the Qualified Lender has provided notice to the SFMTA under Section 1116(~~h~~)(1), upon foreclosure in accordance with applicable law and the terms of the security agreement between the Qualified Lender and the Medallion Holder, the Qualified Lender shall Retransfer the Transferable Medallion pursuant to the provisions of this Section to the Transferee identified by the SFMTA at the Medallion Transfer Price. The proceeds of such Retransfer sale shall be distributed first to the Qualified Lender to satisfy, to the extent possible, the Medallion Holder's debt to the Qualified Lender as determined by reference to the unpaid balance under the loan agreement between the Medallion Holder and the Qualified Lender. Any remaining proceeds shall be distributed to the SFMTA. The SFMTA shall use such proceeds to satisfy the Medallion Transfer Allocation and Driver Fund Retransfer Contributions, and shall deposit any additional funds into the Drivers Fund.

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SEC. 1117. PERMIT ISSUANCE; NOTICE OF INACTIVE STATUS.

(a) **Permit Issuance.** The SFMTA may issue any class of Motor Vehicle for Hire Permit only upon its determination that the permit applicant meets all requirements and qualifications for the permit.

(b) **Investigation of Applicants for Permits.** Upon receipt of an application for a permit, the SFMTA shall investigate the permit applicant. The applicant must furnish any additional material requested by the SFMTA, and if such additional material is not provided within 30 days of request, the application shall be deemed inactive.

(c) ~~**SFMTA Hearing Challenging Decision; Hearing to Deny Application for Permit.**~~
At the conclusion of the investigation of an applicant for a permit, the SFMTA shall inform the applicant, in writing, of the SFMTA's decision to grant or deny the permit. If the SFMTA has decided to deny the permit, the SFMTA shall deliver ~~the a~~ a Notice of Denial, which shall include a statement of the grounds for denial. The SFMTA shall serve its decision in accordance with Section 1120(i), ~~which shall include a statement of the grounds for denial, by personal service or by first class U.S. Mail.~~ The applicant may request a hearing before a Hearing Officer on SFMTA's decision by submitting to SFMTA a written request for hearing within 20 business days of the date that the Notice of Denial is ~~served personally delivered or mailed to the applicant.~~

(d) **Procedures for Hearing Challenging Decision to Deny a Permit Application or Determination that Application is Inactive.** Any hearing pursuant to this Section 1117 shall be conducted in accordance with the procedures set forth in Section 1120.

~~(1) An applicant is entitled to a continuance of the hearing date, of up to 30 days in the Hearing Officer's sole discretion, if a written request is submitted to the Hearing Officer at least 14 calendar days prior to the scheduled hearing.~~

~~(2) The SFMTA must provide the complete application and/or grounds for the action taken, and may present a summary of its investigation of no more than ten double spaced pages,~~

~~excluding exhibits, unless the Hearing Officer approves the filing of a longer summary, no less than 20 calendar days prior to the hearing.~~

~~——— (3) — No less than five calendar days prior to the hearing, the applicant and/or the member of the public who requested the hearing may file a written submission containing any information he or she deems relevant to the application or the results of the investigation. The submission shall not exceed ten double spaced typed pages, excluding exhibits, unless the Hearing Officer approves the filing of a longer submission. If the applicant and/or member of the public who requested the hearing intends to present witnesses at the hearing, he or she shall present a list of these witnesses at least five calendar days prior to the hearing.~~

~~——— (4) — The SFMTA and the party who requested the hearing may alter the hearing schedule specified in this Article by prior written agreement.~~

~~——— (5) — Hearings under this Section 1117 shall be open to the public, and public comment may be permitted in the sole discretion of the Hearing Officer, but the public, including the member of the public who requested the hearing, may be excluded from all or a portion of the hearing when, in the sole and absolute discretion of the Hearing Officer, exclusion is necessary to protect the privacy of the applicant or a third party. The Hearing Officer may also determine that documents submitted for a determination whether they will be admitted into evidence will not be disclosed to the public, whether or not they are admitted into evidence, if necessary to protect the privacy of the applicant or a third party.~~

~~(e) — **Burden of Proof.** If the applicant challenges an SFMTA decision to deny a permit, the burden of proof shall be on the applicant to establish that the applicant meets all eligibility requirements. If a member of the public challenges an SFMTA decision to grant a Medallion, the burden of proof shall be on the member of the public to establish that the applicant does not meet the requirements to be a Medallion Holder.~~

~~(f) — **Notice of Decision.** At the conclusion of the hearing, the Hearing Officer shall issue a written decision upholding or overturning the SFMTA's decision on the application for the permit, which shall be based upon the criteria set forth in this Article. This Notice of Decision shall include findings, shall set forth evidence in support of each finding, and shall be issued within 60 calendar days of the hearing. The Hearing Officer shall deliver the Notice of Decision to the applicant, the SFMTA, and the member of the public who requested the hearing by personal delivery or by first class U.S. Mail.~~

~~(g) — **Results of Hearing.** If the Hearing Officer determines that a permit applicant is qualified for the permit, the SFMTA shall issue the permit within 15 business days of the Notice of Decision.~~

SEC. 1119. ADMINISTRATIVE FINES ASSESSED AGAINST NON-PERMIT HOLDERS.

(a) Whenever the SFMTA determines that a member of the public who is not a Permit Holder has violated this Article 1100, and it decides to pursue administrative enforcement through the imposition of an administrative fine, SFMTA may issue and serve a Citation, in person or ~~by first class U.S. Mail~~ in accordance with Section 1120(i), on any person or entity responsible for the violation.

(b) **Administrative Hearing.**

(1) Any person appealing the issuance of an administrative Citation issued under subsection (a) may request a hearing in accordance with the procedure set forth in Section 1120(a).

(2) All hearings on administrative appeals filed under this Section 1119 shall be conducted in accordance with Section 1120.

(c) **Administrative Fines.**

(1) Administrative fines imposed under this Section 1119 for violations of Article 1100 of Division II of the Transportation Code shall be consistent with Section 310 of Division II of the Transportation Code, and are not subject to adjustment by the Hearing Officer in the context of an administrative hearing conducted under Section 1120.

(2) The penalties and methods of enforcement set forth in this Section are in addition to any other penalties or methods of enforcement authorized by law.

~~(d) **Requirement to Exhaust Administrative Remedies.** The failure of the person or entity cited to follow the procedures set forth in subsection (b) shall constitute a failure to exhaust administrative remedies and shall preclude the person or entity from asserting standing for judicial review of the validity of the Citation.~~

~~(de) **Right to Judicial Review.** A decision of a Hearing Officer made under this Section 1119 is a final administrative decision. The person or entity cited may obtain judicial review of the administrative decision by filing a petition for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4 California Code of Civil Procedure Sections 1094.5 and 1094.6.~~

SEC. 1120. ADMINISTRATIVE HEARINGS.

(a) A Permit Holder or an applicant who receives an SFMTA Citation for a violation listed in Section 1118(a), Notice of Denial under Section 1117(c), Notice of Nonrenewal under Section 1105(a)(5)(B), Notice of Inactive Status under Section 1103(b)(4), Notice of Summary Suspension under Section 1121, or a non-permit holder who receives a Citation under Section 1119 may request a hearing by submitting to SFMTA a request for hearing, in writing, within 20 business days of the date that the Citation, Notice of Denial, Notice of Nonrenewal, Notice of Inactive Status under Section 1103(b)(4), or Notice of Summary Suspension was served on the recipient of said Citation or Notice. ~~personally delivered or sent by first class U.S. Mail.~~ A Notice of Nonrenewal, Inactive Status under Section 1103(b)(4), or Summary Suspension, or a

Citation issued under Section 1119(a) or for a violation listed under Section 1118(a) shall include:

- (1) The name of the person or entity to whom the Notice or Citation is issued,
- (2) The disciplinary measure to be imposed, including the length of any suspension and the amount of any administrative fine, or the action taken (summary suspension) or to be taken (nonrenewal or placement on inactive status),
- (3) The date by which any administrative fine must be paid, the procedure for making payment, and the consequences of failure to pay the fine,
- (4) The provision(s) of this Article 1100 upon which the discipline or action is based, including, where applicable, the date and the address or location of the violation, the signature of the individual who issued the Citation, Notice of Nonrenewal, Notice of Inactive Status, or Notice of Summary Suspension, and
- (5) Notice of the right to request a hearing, the procedure for requesting a hearing, and notice that failure to request a hearing will result in imposition of the proposed discipline or taking of the proposed action, either of which will be a final action of the SFMTA that is not subject to further administrative or judicial review.

(b) Procedures for Review of Citations, Notices of Revocation, or Notices of Administrative Probation.

~~(b)~~ (1) **Complaint.** Within five business days of receipt of the request for a hearing, the SFMTA must provide any Respondent who received an SFMTA Citation for a violation listed under Section 1118(a), a Citation issued under Section 1119(a), Notice of Nonrenewal under Section 1105(a)(5)(B), Notice of Inactive Status under Section 1103(b)(4), or Notice of Summary Suspension under Section 1121, with a written Complaint consisting of a list of each alleged violation or the basis for nonrenewal, inactive status, or summary suspension, the alleged facts that establish each violation or support nonrenewal, inactive

status or summary suspension, and any argument in support of requested disciplinary measure(s), administrative fine(s), or determination(s) made by the SFMTA. The Complaint shall not exceed ten double-spaced pages, excluding exhibits, unless the Hearing Officer approves the filing of a longer Complaint. In addition to the Complaint, the SFMTA may submit proposed findings to the Hearing Officer.

(e) (2) **Scheduling an Administrative Hearing.** The administrative hearing shall be scheduled no sooner than 30 calendar days after SFMTA serves Respondent ~~receives~~ ~~the~~ with Notice of Nonrenewal, Notice of Inactive Status, Notice of Summary Suspension or Citation, unless the parties agree to a different schedule. Respondent may request a continuance of the hearing by submitting a written request to the Hearing Officer at least five business days prior to the scheduled hearing. The Hearing Officer must grant or deny the request for continuance within three business days, and must deliver the final decision on the request for continuance to the Respondent by personal deliver or first-class U.S. Mail, and must post the final decision on the SFMTA's website. No continuance of the administrative hearing may exceed 60 days. If there is a pending criminal proceeding against the Respondent, the Hearing Officer may continue the hearing pending final resolution of the criminal case; provided that such continuance of the hearing shall not affect a summary suspension under Section 1121.

(d) (3) **Response to Complaint.** No later than ten business days prior to the hearing, the Respondent may provide the SFMTA and the Hearing Officer with a written response to the Complaint, along with any additional information that the Respondent considers relevant to the case. The response shall not exceed ten double-spaced pages, excluding exhibits, unless the Hearing Officer approves the filing of a longer response, and shall include a list of the witnesses, if any, that the Respondent will present at the hearing. In

addition to the response, the Respondent may include as a part of the response any proposed findings that the Respondent proposes be adopted by the Hearing Officer.

(c) Procedures for Review of Decision to Deny a Permit Application or Determination that Application is Inactive. In the case of a request by an applicant for hearing on a Notice of Denial or determination that an application is inactive:

(1) The SFMTA shall hold a hearing within 30 days of receiving a hearing request from the applicant, unless a later date is agreed to by the parties as set forth below.

(2) Not less than 15 days prior to the hearing, the applicant may file a written submission containing any information the applicant deems relevant to the application.

(3) Not less than five days prior to the hearing, SFMTA may file a written response to applicant's submission.

(A) Submissions shall not exceed 10 double-spaced typed pages, excluding exhibits, unless the Hearing Officer approves filing a longer submission.

(B) If either party intends to present witnesses at the hearing, the party shall present a list of witnesses to the other party at least five calendar days prior to the hearing.

(ed) Presentation of the Case. The following procedures shall apply to hearings held under this Section 1120:

(1) In the case of a hearing on the review of a Citation, Notice of Revocation, Notice of Administrative Probation, or Summary Suspension, tThe SFMTA shall make the initial presentation of its case at the hearing, and shall have the burden of proving, by a preponderance of the evidence, the facts alleged in the Complaint. The Respondent may present evidence following the SFMTA's presentation.

(2) In the case of a hearing on a Notice of Denial, the applicant shall have the burden of proving, by a preponderance of the evidence, that the applicant meets all of the eligibility requirements.

(23) Following presentation of evidence, each party shall have at least five minutes to present their rebuttal arguments, if any.

(34) In any hearing, subject to the Hearing Officer's discretion to limit evidence to evidence that is relevant to the proceeding, either party may present its case by means of oral or documentary evidence, may submit rebuttal evidence, and may conduct cross-examination of adverse witnesses.

(fe) **Notice of Decision.**

(1) The Hearing Officer shall issue a written Notice of Decision within 30 ~~ten~~ ~~business~~ business days of the date of the hearing upholding or overturning the Citation, Notice of Nonrenewal under Section 1105(a)(5)(B), Notice of Denial under Section 1117(c), Notice of Inactive Status under Section 1103(b)(4), or Notice of Summary Suspension under Section 1121. The Notice of Decision shall be based upon the criteria set forth in this Article 1100, include findings, and shall set forth evidence in support of each finding. No later than three business days following issuance of the Hearing Officer's Notice of Decision, the SFMTA shall post the results of any disciplinary case against a Permit Holder in accordance with Section 1123, referenced by the date of hearing, the name of the Respondent, the type of permit, and the action taken. The Hearing Officer shall serve send the full text of the Notice of Decision on to Respondent in accordance with Section 1120(i) by first class U.S. Mail or shall deliver it to Respondent ~~by personal service~~ no later than the business day following the issuance of the Notice of Decision. The deadline for the issuance of a decision may be extended if the Hearing Officer requests additional evidence from the parties subsequent to the hearing. If additional evidence is submitted, then the decision will be issued within 30 ~~ten~~ ~~business~~ business days of the last submittal.

(2) The Hearing Officer's decision shall take effect on the date that the Notice of Decision is served on ~~delivered to~~ the Respondent in accordance with Section 1120(i) by personal

~~service or is sent to the Respondent by first class U.S. Mail.~~ In the case of a Notice of Denial, if the Hearing Officer determines that a permit applicant is qualified for the permit, the SFMTA shall issue the permit or modification within 15 business days of the Notice of Decision.

(~~g~~f) **Ex Parte Communications.**

(1) No person or agency may communicate directly or indirectly with a Hearing Officer at any time while a case is pending unless there is notice and an opportunity for the other party to participate.

(2) Any correspondence regarding the substance of a case directed to or received by any Hearing Officer shall become part of the case record file and shall be copied to both parties within 48 hours of the communication. If the communication received is oral, the Hearing Officer shall prepare a memorandum for the record stating the substance and the date of the communication, any response made, and the identity of the person from whom the communication was received. If a communication is received within 48 hours of a scheduled hearing, the Hearing Officer must immediately provide copies of the communication to the parties.

(3) Except as permitted by these procedures and any applicable laws and regulations, there shall be no contact between the SFMTA and the Hearing Officer with respect to any pending case. This prohibition does not preclude communications about administrative or procedural matters, or policy matters that do not involve any pending case regarding any individual permit or permit application.

(~~h~~g) **Hearings Open to Public.** Hearings under this Section 1120 shall be open to the public, and public comment may be permitted in the sole discretion of the Hearing Officer, but the public may be excluded from all or a portion of the hearing when, in the sole and absolute discretion of the Hearing Officer, exclusion is necessary to protect the privacy of the applicant or a third party. The Hearing Officer may also determine that documents submitted

to the Hearing Officer will not be disclosed to the public in order to protect the privacy of the applicant or a third party.

(ih) Settlement.

(1) After issuance of an SFMTA Complaint, Notice of Nonrenewal, Inactive Status under Section 1103(b)(4), or Summary Suspension, or a Citation issued under Section 1119(a) or for a violation listed under Section 1118(a), the SFMTA may enter into a settlement with the Respondent or person cited. The parties may reach a settlement before, during, or after the hearing, but may not enter into a settlement after the Hearing Officer issues the Notice of Decision in accordance with subsection (fe)(2).

(2) A settlement need not be read into the record of the hearing, or approved by the Hearing Officer, but must be reduced to writing, and signed and dated by the SFMTA and Respondent or his or her legal counsel or other authorized representative.

(3) By entering into a settlement agreement, Respondent waives any right to appeal to the City's Board of Appeals, and Respondent waives any right to seek judicial review with respect to the subject of the settlement agreement.

(4) No evidence of an offer of settlement or of any statement made during settlement negotiations is admissible in a future proceeding under this Article.

(ji) Notices.

(1) Any notice, filing or other communication required to be provided to any person or entity by Sections 1117, 1118, 1119, 1120, 1121, or 1122 shall be delivered by personal delivery, overnight guaranteed delivery, or first-class U.S. Mail, return receipt requested, to the last known address of the intended recipient that is on file with the SFMTA.

(2) If the SFMTA is unable to determine the intended recipient's mailing address, the local agency shall post the notice in accordance with Section 1123(a), and shall maintain the posting on its website for at least 10 calendar days.

(3) The date of any notice, filing or other communication directed to the SFMTA or a Hearing Officer shall be the date that it is received.

(4) Notwithstanding the requirements of subsection (i)(1), by mutual agreement between the parties and with the concurrence of the Hearing Officer, the parties may agree to electronic service of any notice, filing, or other communication required to be provided to any person or entity by Sections 1117, 1118, 1119, 1120, 1121, or 1122.

(5) Service of notice under this Section 1120 shall be deemed complete upon the date of personal delivery, deposit in the U.S. Mail, deposit with overnight guaranteed delivery service, or transmission by electronic means.

(kj) **Failure to Appear.** Respondent's failure to appear at a scheduled administrative hearing in person, through a representative, or by written submission, except upon twenty-four (24) hours' prior notice to the SFMTA, will result in imposition of the proposed discipline or taking of the proposed action, either of which will be a final action of the SFMTA that is not subject to further administrative or judicial review; provided, however, that the Hearing Officer shall have the discretion, upon Respondent's showing of good cause, to excuse such failure to appear.

(k) **Right to Judicial Review.** A decision of a hearing Officer made under Section 1119 is a final administrative decision. The person or entity cited may obtain judicial review of the administrative decision by filing a petition for review in accordance with California Code of Civil Procedure Sections 1094.5 and 1094.6

Section 2. Effective Date. This ordinance shall become effective 31 days after enactment. Enactment occurs when the San Francisco Municipal Transportation Agency Board of Directors approves this ordinance.

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: _____
STEPHANIE STUART
Deputy City Attorney

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I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 19, 2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency