

THIS PRINT COVERS CALENDAR ITEM NO.: 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis, Access & Mobility Services Division

BRIEF DESCRIPTION:

Amending Transportation Code, Division II, Article 1100, Sections 1119- 1121 to remove references to the Board of Appeals.

SUMMARY:

- Staff is proposing that the SFMTA Board amend the Transportation Code to remove references to the Board of Appeals and to clarify that a decision by the Hearing Officer will be the final administrative decision. The current Board of Appeals process is duplicative of the due process hearing requirements established in Sections 1120 and 1121 administered by the SFMTA Hearing Section.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Amendment

APPROVALS:

DIRECTOR  _____

SECRETARY  _____

DATE

April 12, 2023

April 12, 2023

ASSIGNED SFMTAB CALENDAR DATE: April 18, 2023

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PURPOSE

Amending Transportation Code, Division II, Article 1100, Sections 1119- 1121 to remove references to the Board of Appeals.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The item will support the following goals and objectives of the SFMTA Strategic Plan:

Goal 5. Deliver reliable and equitable transportation services

Goal 9: Fix things before they break, and modernize systems and infrastructure

This item will support the following Transit First Policy Principles:

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

The Taxis, Access & Mobility Services Division of the San Francisco Municipal Transportation Agency (SFMTA) is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance, and administering discipline for regulatory violations.

As part of that mandate, SFMTA's Taxis, Access & Mobility Services Division strives to ensure that San Francisco taxicab industry remains a safe and reliable transportation choice. This includes proposing amendments to the Transportation Code for SFMTA Board consideration. This legislation is part of an ongoing effort to update taxicab rules.

BACKGROUND

The SFMTA was created in 1999 after the voters adopted Proposition E. Proposition E combined the functions of the Municipal Railway and the Department of Parking and Traffic into a single agency and also gave the SFMTA certain powers and duties previously held by other City departments. 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 broadening the scope and effect of the Board of Supervisors' power to transfer taxi functions to the SFMTA. Specifically, Proposition A amended the Charter to grant the SFMTA "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 supersede all

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previously adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.” Section 8A.101(b).

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.

The Hearing Section process is quasi-judicial, and there is an ethical wall between all SFMTA divisions and the Hearing Section. The Hearing Section has clear policies, which are taken very seriously, that disallow staff from discussing hearings with the Hearing Section.

With the passage of Proposition A, the Board of Appeals no longer had jurisdiction to hear taxi-related appeals, although the SFMTA maintained this legacy appeal process during the initial transition period when the regulatory authority of taxis came under the SFMTA. In 2013, the SFMTA and the Board of Appeals considered establishing a Memorandum of Understanding (MOU) to formalize 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 decisions. Under the practice that the SFMTA had previously agreed to, an aggrieved permittee was allowed to appeal the SFMTA Hearing Section’s decision to the Board of Appeals.

Exclusive Jurisdiction

The Charter provides the SFMTA with exclusive jurisdiction over taxi matters, including appeals. 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. This exclusive jurisdiction means that the Board of Appeals may decide taxi appeals only if the SFMTA consents.

After seeking and receiving guidance from the City Attorney’s office regarding the SFMTA’s authority to discontinue the practice of allowing taxi permit decisions to be appealed to the Board of Appeal, the SFMTA Director of Transportation instructed Taxi Services to discontinue the practice. The Taxi Director consulted with the Director of the Board of Appeals, and thereafter, the process of allowing taxi permit appeals to be heard by the Board of Appeals was terminated.

Process Reset

Staff initially brought the proposal to eliminate references to the Board of Appeals from the Transportation Code before the SFMTA Board at the October 18, 2022 meeting as part of a larger package of taxi related changes, but the Board separated the Board of Appeals matter from the broader legislative package and declined to approve the changes related to the Board of Appeals at that time. Staff returned before the SFMTA Board at the November 15, 2022 meeting, but did not receive enough votes to approve the proposed Transportation Code amendments regarding the Board of Appeals.

After receiving public feedback regarding the decision to terminate the practice, the Director of Transportation paused the decision to allow further dialogue, including a meeting between the Chair of the SFMTA Board of Directors and the President of the Board of Appeals, which took place on March 23, 2023. The discussion centered around issues raised by the Board of Appeals, including a robust discussion on the need for the hearing process to emphasize dignity and respect, and to ensure that vulnerable citizens feel heard and understood.

Rationale for Terminating the Board of Appeals Process

San Francisco taxi permittees or applicants are afforded due process through the hearing requirements established in Article 1100 of the Transportation Code. Permittees or applicants who receive a citation or notice of denial, nonrenewal, or summary suspension of their permit may appeal that decision by requesting a hearing through the SFMTA's Hearing Section. A hearing is held and a Hearing Officer either upholds or overturns the SFMTA's decision, providing permittees with due process protections. The practice of going to the Board of Appeals adds another hearing, which is duplicative, as the hearings before the Board of Appeals are *de novo*, which means that the hearing starts from the beginning. This results in excessive staff time to prepare for a second hearing on a matter that has already been heard before the Hearing Officer. Board of Appeals decisions are also subject to requests for rehearing, which adds an additional layer of bureaucracy and requires significant staff resources to prepare for.

The Board of Appeals Commissioners are not subject matter experts regarding taxi regulations and generally do not deal with any other issues pertaining to the Transportation Code, particularly Article 1100. SFMTA staff must devote significant time to prepare for and attend hearings before the Board of Appeals, and staff must be prepared to answer a voluminous number of questions from the Commissioners because of the unique nature of the taxi industry in the Board of Appeals' standard appeals portfolio.

Additionally, SFMTA is working to harmonize its permit programs on key regulatory matters, when applicable. Aligning the appeals process to establish standard rules and processes regarding an applicant or permittee's ability to appeal is a key example of this type of permit harmonization, which is a good government measure.

Hearings before the Board of Appeals

In FY2015, the Board of Appeals heard two taxi related matters and upheld the SFMTA's action in both. Both respondents subsequently filed requests for rehearing, and both were denied respectively. In FY2016 and FY2017, the Board of Appeals did not hear any taxi related

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appeals. One matter was heard before the Board of Appeals in FY2018, and the SFMTA's action was upheld by default.

A comprehensive permit review and enforcement initiative was undertaken in 2019 and 2020, which resulted in 316 notices of nonrenewal being sent to 257 Medallion holders in September 2020. This enforcement activity generated an increase in the number of appeals both before the Hearing Officer and the Board of Appeals.

Of the 316 Medallions impacted, 146 cured their outstanding issues and were promptly renewed. The holders of 121 Medallions did not respond, and the notice of nonrenewal became final. A total of 49 appeals were filed. Of the appeals filed, a total of 17 hearings were heard before a Hearing Officer, 32 resulted in default decisions because the permittee failed to appear.

- Of the 17 hearings heard before an SFMTA Hearing Officer, the Taxi Division's action was upheld in 13 hearings, while the Hearing Officer overturned the Taxi Division's action in four hearings.
- A total of eight appeals went to the Board of Appeals.
 - SFMTA was the appellant in three of the eight.
 - One of the three appeals where SFMTA was the appellant was settled prior to the hearing date, so the hearing did not go forward and the Medallion Holder renewed their Medallion. The Board of Appeals denied SFMTA's appeal in the other two appeals, meaning that the Medallion Holders were allowed to renew.
 - Out of the five appeals where SFMTA was the respondent, in two instances the Board of Appeals could not reach a decision, meaning the underlying decision of the Hearing Officer was upheld. In those two instances, the underlying decision of the Hearing Officer upheld Taxi Services' permit action. In the remaining three appeals, the Board of Appeals granted the Medallion Holders' appeals, meaning that they were able to renew their respective Medallion.

Proposed Transportation Code Revisions by Section

Article 1100

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

The informal practice of allowing taxi permit appeals to be heard by the Board of Appeals is duplicative of the due process hearing requirements established in Sections 1120 and 1121 administered by the SFMTA Hearing Section. The proposed amendment in this section clarifies that the decision by a Hearing Officer is the final administrative decision with respect to administrative hearings conducted pursuant to Sections 1119, 1120 and 1121.

Section 1120. ADMINISTRATIVE HEARINGS.

Staff is proposing to delete inapplicable references to the Board of Appeals and to clarify that the decision by a Hearing Officer made under Sections 1119, 1120 and 1121 is the final administrative decision.

Section 1121. SUMMARY SUSPENSION OF PERMIT FOR HEALTH OR SAFETY REASONS.

Staff is proposing that references to the Board of Appeals be removed.

STAKEHOLDER ENGAGEMENT

Staff discussed the matter of the SFMTA discontinuing to allow the Board of Appeals to hear taxi permit appeals and took feedback from the taxi industry at the last two taxi quarterly meetings (November 30, 2022 and February 28, 2023). The comments received from the taxi industry supported maintaining the ability for taxi permit decisions to be heard both by the Hearing Section and by the Board of Appeals. The Director of Taxis appeared before the Board of Appeals to discuss this matter on two occasions (November 16, 2022 and December 7, 2022). Additionally, a meeting was held between SFMTA and the Board of Appeals, which included the President of the Board of Appeals, the Executive Director of the Board of Appeals, the SFMTA Board Chair, the Director of Transportation and the Director of Taxis. This meeting was highly informative and included a robust discussion on the need for the hearing process to emphasize dignity and respect, and to ensure that vulnerable citizens feel heard and understood.

ALTERNATIVES CONSIDERED

The decision to end the informal practice of allowing taxi related matters to be heard by the Board of Appeals may be made under the authority of the Director of Transportation. Staff considered leaving the informal practice in place but given the significant amount of staff time spent and the duplicative nature of the process, staff recommends ending the practice.

FUNDING IMPACT

When a taxi permit holder is issued a new permit or renews annually, the SFMTA collects Board of Appeals (BoA) fees on their behalf and transfers collected fees to BoA. If this item is approved, SFMTA will no longer collect and transfer these fees. Because all fees are transferred to BoA, approving this item has no impact to SFMTA revenue sources. However, the administrative burden of collecting and transferring fees will be reduced.

ENVIRONMENTAL REVIEW

On September 29, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the proposed amendments to Transportation Code, Division II, Article 1100 – Taxi Meter Rates, Gate Fees, and Other Updates, including removing inapplicable references to the Board of Appeals, are not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(s) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Amending Transportation Code, Division II, Article 1100, Section 1119- 1121 to remove references to the Board of Appeals.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Charter provides the San Francisco Municipal Transportation Agency (SFMTA) with exclusive jurisdiction over taxi matters, including appeals; and,

WHEREAS, 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; and,

WHEREAS, San Francisco taxi permittees who receive a notice of denial, nonrenewal, revocation or summary suspension of their permit may appeal that decision by requesting a hearing through the SFMTA's Hearing Section; and,

WHEREAS, prior to ending the informal practice of allowing taxi related matters to be heard by the Board of Appeals, SFMTA wants to remove references to the Board of Appeals from the Transportation Code; and,

WHEREAS, On September 29, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the proposed amendment to Transportation Code, Division II, Article 1100 – remove references to the Board of Appeals is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(s) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amend Transportation Code, Division II, Article 1100, Section 1119- 1121.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 18, 2023.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

[Transportation Code – Regulation of Motor Vehicles for Hire]

Resolution amending the Transportation Code to modify the administrative hearing procedures applicable to motor vehicle for hire permits issued under Article 1100.

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 1100 of Division II of the Transportation Code is hereby amended by revising Sections 1119 - 1121 to read as follows:

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

* * * *

(d) **Right to Judicial Review.** A decision of a Hearing Officer made under ~~this~~ Sections 1119, 1120, or 1121 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.

SEC. 1120. ADMINISTRATIVE HEARINGS.

* * * *

(h) **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 (e)(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 Respondent's 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.

* * * *

(k) **Right to Judicial Review.** A decision of a ~~H~~Hearing Officer made under Sections 1119, 1120, or 1121 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.

SEC. 1121. SUMMARY SUSPENSION OF PERMIT FOR HEALTH OR SAFETY REASONS.

* * * *

(c) **Appeal.** If the Permittee ~~appeals a~~ seeks judicial review of the Hearing Officer's decision upholding a summary suspension ~~to the Board of Appeals,~~ the summary suspension shall remain in effect until a final decision is issued by the court ~~Board of Appeals.~~ Where a permit is revoked after a summary suspension, the revocation shall be effective immediately and, if the Permittee seeks judicial review ~~appeals to the Board of Appeals,~~ shall remain in effect until a final decision is issued by the court ~~Board of Appeals.~~

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

Section 3. Scope of Resolution. In enacting this resolution, 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 resolution as additions or deletions in accordance with the "Note" that appears under the official title of the resolution.

APPROVED AS TO FORM:
DAVID CHIU, 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 April 18, 2023.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency