

THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION: Amending San Francisco Transportation Code, Division II, by adding Sections 314 and 315 to establish administrative penalties and related hearing procedures for submitting false, misleading, or fraudulent information on Residential Parking Permit (RPP) applications.

SUMMARY:

- The SFMTA issues more than 70,000 permits each year for preferential parking in San Francisco.
- Current penalties for submitting and obtaining RPP permits using false or misleading information are difficult to enforce and do not pose a significant deterrent.
- The SFMTA is proposing the establishment of a \$500 administrative penalty and related hearing procedures for individuals who submit or obtain permits using false or misleading information to serve as a more significant deterrent for such behavior.
- The Board of Supervisors approved a resolution amending Division I of the Transportation Code authorizing this penalty on November 8, 2011 based on the June 7, 2011 resolution approved by the Board of Directors.
- Planning has provided a statutory exemption for this penalty.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Amendment

APPROVALS:

DATE

DIRECTOR _____ 1/9/12

SECRETARY _____ 1/9/12

ASSIGNED SFMTAB CALENDAR DATE: January 17, 2012

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PURPOSE

Amending the San Francisco Transportation Code, Division II, by adding Sections 314 and 315 to establish administrative penalties and related hearing procedures for submitting false, misleading, or fraudulent information on Residential Parking Permit (RPP) applications.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal #2: System Performance: To get customers where they want to go, when they want to be there.

Objective 2.5: Manage parking supply to align with SFMTA and community goals.

Goal #4: Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2: Ensure efficient and effective use of resources.

DESCRIPTION

During recent deliberations by the Board of Directors regarding potential fraud related to RPP, the Board requested the implementation of penalties for individuals who fraudulently obtain RPP permits. Under current law, when SFMTA staff confirms an RPP permit was obtained fraudulently it is cancelled in the permit database. In order to identify the invalid permit in the field, a Parking Control Officer (PCO) would be required to enter the permit number into their handheld device. This is not feasible given the volume of permits and the areas required to be enforced. PCO's instead conduct visual confirmation of permits. Even if PCO's were to identify a vehicle displaying an invalid permit, the vehicle would only be subject to an RPP overtime parking violation. This does not create a sufficient deterrent.

The MTAB approved a resolution on June 7, 2011, requesting approval to submit an ordinance to the Board of Supervisors (BOS) amending Division I of the Transportation Code authorizing the establishment of an administrative penalty for any individual who knowingly makes false, misleading or fraudulent statements or representations on an RPP application. This ordinance was approved by the BOS on November 8, 2011, with an effective date 30 days thereafter. This resolution is a companion piece that amends Division II of the Transportation Code and sets a penalty of up to \$500 for each instance of fraud. It also establishes the administrative hearing process for individuals to seek review. This additional penalty will help deter fraud in the program and preserve the preferential parking program for neighborhood residents.

ALTERNATIVES CONSIDERED

Without a change in State law, this proposal is the only viable alternative to establish penalties for fraud related to the RPP program. The other alternative which the Board rejected when they

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approved the June 7, 2011 resolution is not to establish a penalty.

FUNDING IMPACT

No significant fiscal impact anticipated. The purpose of this ordinance is to create a deterrent to fraudulent behavior and, as such, the SFMTA does not expect to assess a significant number of penalties.

PUBLISHED NOTICE AND PUBLIC HEARING

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 January 17, 2012 to consider the above modifications. In compliance with these requirements, the advertisement ran in the San Francisco Chronicle for a five-day period beginning on December 26, 2011.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Board of Supervisors approved an ordinance amending Division I of the San Francisco Transportation Code authorizing the SFMTA to establish these administrative penalties on November 8, 2011.

In addition, increases to fees, rates, fines and charges are subject to environmental review under the California Environmental Quality Act (CEQA). The Department of City Planning has determined that changes in various fines, fees, rates and charges, as itemized in the attachment to this Resolution, including imposing a \$500 administrative penalty, are statutorily exempt from environmental review under California Public Resources Code section 21080(b)(8) and CEQA implementing guidelines, Title 14 of the California Code of Regulations section 15273, because the increases will be used to meet operating expenses including employee wage rates and fringe benefits, or to purchase or lease supplies, equipment, or materials.

RECOMMENDATION

The SFMTA Board of Directors approve amendments to the San Francisco Transportation Code, Division II, by adding Sections 314 and 315 to establish administrative penalties and related hearing procedures for submitting false, misleading, or fraudulent information on Residential Parking Permit applications.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA issues more than 70,000 permits each year for preferential parking in San Francisco; and,

WHEREAS, Current penalties for submitting and obtaining RPP permits are difficult to enforce and do not pose a significant deterrent; and,

WHEREAS, the Board of Supervisors amended Division I of the Transportation Code authorizing the establishment of an administrative penalty for any individual who knowingly makes false, misleading or fraudulent statements or representations on an RPP application; and

WHEREAS, The SFMTA is proposing the establishment of a \$500 administrative penalty for individuals who submit or obtain permits using false or misleading information to serve as a more significant deterrent for such behavior; and,

WHEREAS, The Department of City Planning has determined that changes in various fines, fees, rates and charges, as itemized in the attachment to this Resolution, including imposing a \$500 administrative penalty, are statutorily exempt from environmental review under California Public Resources Code section 21080(b)(8) and CEQA implementing guidelines, Title 14 of the California Code of Regulations section 15273; and,

WHEREAS, The Department of City Planning's determination is on file with the Secretary of the Board of Directors; 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 for a five-day period beginning on December 26, 2011 to provide notice that the Board of Directors will hold a public hearing on January 17, 2012 to consider the above modifications; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amends the San Francisco Transportation Code, Division II, by adding Sections 314 and 315 to establish administrative penalties and related hearing procedures for submitting false, misleading, or fraudulent information on Residential Parking Permit (RPP) applications.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

[Transportation Code – Administrative Penalties for False, Misleading, or Fraudulent Information on Residential Parking Permit Applications]

Resolution amending San Francisco Transportation Code, Division II, by adding Sections 314 and 315 to establish administrative penalties for false, misleading, or fraudulent information on Residential Parking Permit applications.

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 adding Sections 314 and 315, to read as follows:

SEC. 314. – RESIDENTIAL PARKING PERMIT APPLICATIONS – FALSE, MISLEADING OR FRAUDULENT INFORMATION; VIOLATION OF DIVISION I, SECTION 7.2.50 - ADMINISTRATIVE PENALTIES.

(a) Any person who violates subsection (b) of Division I, Section 7.2.50 may be subject to the issuance of a citation and imposition of an administrative penalty.

(b) Administrative penalties may not exceed \$500 for each offense.

(c) The Director of Transportation is authorized to designate officers or employees of the Municipal Transportation Agency to enforce subdivision (b) of Division I, Section 7.2.50. Any officer or employee so designated is hereby authorized to issue citations imposing administrative penalties for violations of subdivision (b) of Division I, Section 7.2.50.

SEC. 315. – PROCEDURE FOR ASSESSMENT AND COLLECTION OF ADMINISTRATIVE PENALTIES.

(a) This Section shall govern the imposition, assessment and collection of administrative penalties imposed pursuant to Section 314.

(b) The SFMTA Board of Directors finds:

(1) That it is in the best interest of the City, its residents, visitors and those who park on City streets to provide an alternative, administrative penalty mechanism for enforcement of Residential Parking Permit applications that contain false, misleading, or fraudulent information in addition to the existing enforcement mechanisms authorized under the San Francisco Transportation Code; and

(2) That the administrative penalty scheme established by this section is intended to compensate the public for the injury or damage caused by any person who submits a Residential Parking Permit application containing a fraudulent statement in order to obtain preferential parking in a Residential Parking Permit Area. The administrative penalties authorized under this section are intended to be reasonable and not disproportionate to the damage or injury to the City and the public caused by the prohibited conduct.

(c) *Administrative Citation.* Where an officer or employee designated in Section 314 determines that there has been a violation of subdivision (b) of Division I, Section 7.2.50, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. The citation may be personally served on the applicant or by certified U.S. mail to the address indicated on the permit application. The citation shall inform the person or entity responsible of the date and nature of the violation and the amount of the administrative penalty, and shall state that the penalty is due and payable to the SFMTA within 15 business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, pursuant to Subsection (d), to request an

administrative hearing of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting an administrative hearing. The designated officer or employee shall mail the administrative citation and evidence supporting the determination of a violation of subdivision (b) of Division I, Section 7.2.50 to the residential address listed on the Residential Parking Permit application submitted to the SFMTA pursuant to Section 905.

(d) *Request for Hearing; Hearing.*

(1) A person or entity that has been issued an administrative citation may request an administrative hearing in person, by telephone, or by email in order to contest the citation issued in accordance with this Section. The administrative hearing shall be initiated by filing a request for an administrative hearing with the SFMTA Hearing Division within 15 business days from the date of the citation. Failure to request a hearing in a timely manner or to attend a scheduled hearing shall satisfy the hearing requirement.

(2) Whenever an administrative hearing is requested pursuant to this Section, the SFMTA Hearing Section shall, within fifteen business days of receipt of the request, notify the requestor of the date, time, and place of the administrative hearing by certified mail. Such hearing shall be held no later than thirty (30) calendar days after the SFMTA Hearing Section receives the request, unless time is extended by mutual agreement of the affected parties.

(3) The administrative hearing shall be conducted by a neutral Hearing Officer assigned by the SFMTA Hearing Section. The SFMTA Hearing Section may issue rules as needed to implement this requirement. The parties may present evidence and testimony to the Hearing Officer. All testimony shall be

under oath. The Hearing Officer shall ensure that a record of the proceedings is maintained. The burden of proof to uphold the violation shall be on the City, but the administrative citation shall be prima facie evidence of the violation.

(4) The Hearing Officer shall issue a decision including a summary of the issues and the evidence presented, and findings and conclusions, within fifteen (15) business days of the conclusion of the hearing. The Hearing Officer may uphold the penalty imposed by the citation or dismiss the citation. A copy of the decision may be personally delivered to the person contesting the violation or sent by first class mail. The decision shall be a final administrative determination. An aggrieved party may seek judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

(e) *Payment and Collection of Penalty.*

(1) Where a person has not made a timely request for administrative hearing, the penalty shall be due and payable to the SFMTA on or before 15 business days from the date of issuance.

(2) Where a person or entity has made a timely request for administrative hearing, and the violation and penalty have been upheld upon review, the administrative penalty shall be due and payable not later than 10 business days from the date of the notice of decision issued under subparagraph (d)(4).

(3) If a penalty due and payable under paragraphs (1) or (2) remains unpaid after the specified due date, the SFMTA shall send the violator written notice that the penalty is overdue. Penalties that remain unpaid 30 calendar days after the due date shall be subject to a late payment penalty of fifty (\$50) dollars. Persons and entities against whom administrative penalties are imposed shall

also be liable for the costs and attorney's fees incurred by the SFMTA in bringing any civil action to enforce the provisions of this section, including obtaining a judgment for the amount of the administrative penalty and other costs and charges.

(4) Where there is a nexus between the violation and property in the City owned by the violator, the SFMTA shall further inform the violator that if the amount due is not paid within 30 calendar days from the date of the notice, the SFMTA shall initiate proceedings to make the amount due and all additional authorized costs and charges, including attorneys fees, a lien on the property. Such liens shall be imposed in accordance with Chapter 10, Article XX of the Administrative Code.

(f) Administrative penalties shall be deposited in the Municipal Transportation Fund and may be expended only by the SFMTA.

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

By: _____
John I. Kennedy
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 January 17, 2011.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency