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## MEMORANDUM

TO: Honorable Members, SFMTA Board of Directors  
Honorable Members, Board of Appeals  
Jeffrey Tumlin  
Director of Transportation  
Julie Rosenberg  
Executive Director, Board of Appeals

FROM: Stephanie Stuart Bethune, Deputy City Attorney *SB*  
Bradley Russi, Deputy City Attorney *BR*

DATE: August 24, 2022

RE: Jurisdiction Over Appeals of Taxi Permitting Decisions

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### Summary

The San Francisco Municipal Transportation Agency (SFMTA) Director of Transportation has asked whether SFMTA decisions regarding taxi permits are appealable to the Board of Appeals and specifically whether the SFMTA could rescind its voluntary agreement with the Board of Appeals. The SFMTA's inquiry relates only to future appeals of taxi permitting decisions; any decision to rescind the informal arrangement with the Board of Appeals would not impact appeals pending before the Board of Appeals. Until 2007, the Board of Appeals had jurisdiction under the City Charter to hear appeals of taxi permitting decisions made by the SFMTA's predecessor agencies. The passage of Proposition A in 2007 granted the SFMTA exclusive authority over the regulation of taxis. After the passage of Proposition A, our Office advised that the measure gave the SFMTA the power to prescribe the procedure for appealing taxi permit decisions, and therefore supplanted the Board of Appeals' jurisdiction over such appeals unless the SFMTA agrees to such review. Consistent with this advice, since 2013, the SFMTA has agreed to allow the Board of Appeals to continue to hear appeals of taxi permitting decisions. That agreement has taken the form of an informal arrangement. In this memorandum we confirm our prior advice and affirm that the SFMTA, in its discretion, may terminate the informal arrangement with the Board of Appeals regarding taxi permitting decisions, though if it were to do so we recommend that the SFMTA consult with the Board of Appeals in advance to provide for a smooth and transparent transition.

### Discussion

#### I. Charter Authority of the Board of Appeals

Section 4.106(b) of the San Francisco Charter confers jurisdiction on the Board of Appeals to hear appeals of many City permitting decisions, including the authority to hear an appeal from any person who "has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn . . . or who believes his or her interest or the public interest will be adversely affected by the grant, denial, suspension, or revocation of a license or permit . . ." Before the amendments to the Charter discussed below, Charter Section 4.106 (b) gave aggrieved taxi applicants and permit holders whose permits had been suspended or revoked the right to appeal the decision to the Board of Appeals.

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**II. SFMTA Charter Authority.**

The SFMTA was created in 1999 after the voters adopted Proposition E, which added Article 8A to the Charter. Proposition E combined the functions of the Municipal Railway and the Department of Parking and Traffic into a single agency. Proposition E also gave the SFMTA certain powers and duties that other City departments had previously held. For example, Proposition E gave the SFMTA exclusive authority to set fares for Muni and exclusive authority over the construction and management of all SFMTA property and financial assets. Charter §8A.102(b), §8A.106. Also, 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 providing greater clarity regarding the SFMTA's exclusive jurisdiction over parking and traffic matters. Proposition A also clarified and broadened the scope and effect of the Board of Supervisors' power to transfer taxi functions to the SFMTA. Specifically, Proposition A amended the relevant Charter section to read as follows:

The Board of Supervisors shall have the power, by ordinance, to abolish the Taxi Commission created in Section 4.133, and to transfer the powers and duties of that commission to the Agency under the direction of the Director of Transportation or his or her designee. In order to fully integrate taxi-related functions into the Agency should such a transfer occur, *the Agency shall have 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 supercede all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.* Section 8A.101(b). (Emphasis added.)

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. In 2013, the SFMTA and the Board of Appeals negotiated a Memorandum of Understanding (MOU) intended to memorialize 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

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decisions. Under the current practice that the SFMTA has agreed to, an aggrieved permittee may appeal the SFMTA Hearing Section's decision to the Board of Appeals.

**III. The SFMTA's exclusive jurisdiction over taxi matters supplants the Board of Appeals' authority to hear appeals, so the Board of Appeals may decide these appeals only if the SFMTA consents.**

The Board of Supervisors' abolition of the Taxi Commission and transfer of its functions to the SFMTA had two legal consequences. One, the SFMTA – not the Board of Supervisors or Board of Appeals – has exclusive authority over taxi-related functions, to the same extent that it does over many Municipal Railway functions. In other words, as to taxi permits, Ordinance No. 308-08 transferred the police power that had been exercised previously by the Board of Supervisors, the administrative authority of the Taxi Commission, and the appellate authority of the Board of Appeals to the SFMTA. Two, 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.

The SFMTA's exclusive jurisdiction over taxi regulation supplanted the Board of Appeals' jurisdiction over taxi-related permit decisions, because Charter Section 8A.101(b) and Article 1100 of the Transportation Code superseded Charter Section 4.106(b). Therefore, just as the SFMTA agreed to delegate its authority and allow the Board of Appeals to hear appeals of taxi permit decisions, the SFMTA may decide, in its discretion, to discontinue that practice, thereby terminating the Board of Appeals' ability to hear appeals related to taxi permitting decisions. Notwithstanding a decision to terminate the Board of Appeals' ability to hear appeals of taxi permit decisions, an aggrieved taxi permit applicant or permit holder will still have an opportunity to appeal an adverse permit decision. Under Article 1100, when the SFMTA denies an application for a taxi permit or suspends or revokes an existing permit, the applicant or permit holder is afforded a full evidentiary hearing before an SFMTA Hearing Officer. If the SFMTA opts to rescind its informal arrangement with the Board of Appeals regarding its exercise of jurisdiction over appeals from taxi decisions, we recommend that the SFMTA Board of Directors consider any amendments to Article 1100 of the Transportation Code necessary to effectuate such change.

### Conclusion

Based on the analysis above, the Charter provides the SFMTA exclusive jurisdiction over taxi matters, including appeals, and exempts taxi permit decisions from a mandatory appeal to the Board of Appeals under Charter Section 4.106. Thus, the SFMTA may discontinue the practice of allowing the Board of Appeals to hear appeals related to the grant, denial, suspension, or revocation of taxi permits. If the SFMTA elects to terminate its informal arrangement with the Board of Appeals, we recommend that it do so after consulting with the Board of Appeals for the benefit of the public and to facilitate a smooth transition and also that the SFMTA Board of Directors consider any necessary amendments to Article 1100 of the Transportation Code.