



London Breed, Mayor

Malcolm Heinicke, Chair
Gwyneth Borden, Vice Chair
Cheryl Brinkman, Director
Amanda Eaken, Director

Steve Heminger, Director
Cristina Rubke, Director
Art Torres, Director

Tom Maguire, Interim Director of Transportation

PROCEDURES FOR REVIEW OF PERMIT DENIALS AND PERMITS GRANTED WITH MODIFICATIONS FOR POWERED SCOOTER SHARE PROGRAMS

I. **Authorization and Scope.** In accordance with Section 916 of the San Francisco Transportation Code, these procedures shall govern the review of: (1) denials by the Director of Transportation of applications for Powered Scooter Share Program permits; and (2) permits granted with modifications from an applicant's permit application.

II. **Definitions.** Unless otherwise defined herein, the meaning of capitalized terms used in these procedures shall be as defined in Section 901 of the San Francisco Transportation Code.

III. **Review Procedure.**

(a) **Service of Permit Denial, Permit Granted with Modifications, and Request for Review.** Where the Director denies an application for a permit or issues a permit with modifications, the SFMTA shall issue a notice of denial to the applicant by certified U.S. mail and by email, which shall include a statement of the grounds for denial, or a notice of a permit granted with modifications, which shall include the grounds or basis for the modification. The applicant may request a hearing to appeal the Director's decision by submitting to the SFMTA Hearing Section a request for hearing, in writing, within 15 business days of the date that the notice is mailed to the applicant. The request for hearing shall include a summary of the applicant's grounds for challenging the permit denial or issuance of a permit with modification(s), and shall be delivered by certified U.S. mail or hand delivery, and by email to the SFMTA Hearing Section and to the Director at the address provided in the decision. Failure to file a timely, written request for review shall result in the applicant's waiver of any and all rights to challenge the Director's determination, whether by administrative process, judicial process, or any other legal process or proceeding, and the determination shall be deemed final upon expiration of the 15-day period.

(b) **Hearings.**

(1) Within 10 business days of receiving a request for review via certified U.S. mail or hand delivery, the SFMTA Hearing Section shall appoint a hearing officer. The hearing officer shall set a date for the hearing, which date shall be no more than 45 calendar days from the date that the request for review was received, send written notice of the hearing date to the applicant and the Director, and direct the SFMTA to prepare the record of documents that was before the Director in making his or her decision ("Record") for the applicant.

(2) Each party may submit a brief in support of its position. The hearing officer shall issue a briefing schedule at the time the hearing is set and shall issue requirements



regarding the length and format of the briefs. No extra-Record evidence will be permitted with the briefing or at the hearing unless the hearing officer makes a finding of good cause. The hearing officer shall determine procedures for review of any requests to submit evidence beyond the Record.

(3) The hearing will be conducted as an informal hearing, and the formal rules of evidence will not apply. The hearing officer has the discretion to deny the admission of evidence that he or she deems irrelevant. Relevant materials and/or argument must be based on the Record before the Director at the time the decision was made. The hearing officer does not have the power to issue subpoenas. The burden of proof shall be on the applicant to establish that there is not substantial evidence to support the Director's decision.

(4) The hearing officer shall render a decision based on the Record, as well as the applicant's written request for review and any materials, briefs, and/or argument submitted by either party at or prior to the hearing as prescribed in these procedures. Such materials, briefs and/or argument must be based on the Record before the Director at the time the decision was made.

(5) Unless otherwise stated in these procedures, service of written materials or requests shall be by first class U.S. mail and email, unless the parties agree to service only by email. The parties may, with the consent of the hearing officer, alter the hearing schedule and/or deadlines set forth by the hearing officer by prior written agreement.

(6) The hearing officer shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in these procedures. The hearing officer may continue the hearing at his or her initiative, or approve or deny a request for a continuance by either party at the hearing officer's sole discretion. Absent a determination of good cause by the hearing officer: such continuances shall not exceed 30 calendar days; only one continuance shall be granted for each party; and requests for continuances by either party shall be denied if received less than seven calendar days before a scheduled hearing. Requests for continuances shall be made in writing.

(7) Hearings under these procedures shall be open to the public. Public comment may be permitted at the sole discretion of the Hearing Officer.

(8) **Ex Parte Communications.**

(A) Unless otherwise authorized in these procedures, no party or representative or agent of a party may communicate with the hearing officer concerning any matter during the pendency of an appeal at any time unless either directed by the hearing



officer or the other party is copied on the communication and provided with an opportunity to respond.

(B) Any ex parte correspondence regarding the substance of a case directed by the hearing officer shall become part of the case record file. If the ex parte 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.

(c) **Notice of Decision.** At the conclusion of the hearing, the hearing officer shall issue a written decision upholding, overturning, or upholding and overturning in part the SFMTA's decision on the denial of an application for a permit, or modification of a permit. This Notice of Decision shall include findings, shall set forth evidence in support of each finding, and shall be issued within 15 calendar days of the hearing, or if the hearing officer requests additional briefing, the Notice of Decision shall be issued within 15 calendar days of such additional submissions. The hearing officer shall serve the Notice of Decision to the applicant and the SFMTA by first-class U.S. mail, with a copy of an affidavit or certificate of mailing, and by email. The failure of the hearing officer to comply with the time requirements of this paragraph shall not cause the hearing officer to lose jurisdiction over an appeal from the SFMTA's determination.

(d) **Final Decision.** A decision of a hearing officer made under these procedures concerning a permit shall be a final administrative decision. An aggrieved party 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.

APPROVED:

A handwritten signature in black ink, appearing to read 'TGM' followed by a flourish.

Thomas G. Maguire
Interim Director of Transportation

September 25, 2019

Date

