

# Powered Scooter Share Program

## Appeals Process



### **PROCEDURES FOR REVIEW OF POWERED SCOOTER SHARE PERMIT DENIALS, PERMITS GRANTED WITH MODIFICATIONS, AND PERMIT REVOCATIONS**

I. **Authorization and Scope.** In accordance with Section 916(e)(1) 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 authorized under Section 916 of the San Francisco Transportation Code; and (2) such permits granted with modifications. In addition, these procedures shall govern review of decisions by the Director of Transportation to revoke a Powered Scooter Share Program permit issued under Section 916 of the San Francisco Transportation Code.

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 Denial, Permit Granted with Modifications, or Permit Revocation and Request for Review.** Where the Director denies an application for a Powered Scooter Share Program permit, issues a permit with modifications, or revokes a permit, the SFMTA shall deliver a notice of denial to the applicant, which shall include a statement of the grounds for denial, the notice of a permit granted with modifications which include the grounds for the modification, or notice of revocation, which shall include the grounds for revocation, by personal service or by certified U.S. Mail. The applicant may request a hearing on 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 personally delivered or sent to the applicant or permittee. The request for a hearing shall include a summary of the applicant's grounds for challenging the permit denial, issuance with modification, or revocation.

(b) **Hearing.**

(1) The SFMTA Hearing Section shall take the following actions within 10 business days of receiving an appeal: appoint a hearing officer, set a date for the hearing, which date shall be no more than 45 calendar days from the date that the appeal was filed, and send written notice of the hearing date to the appellant and the Director. At least seven calendar days prior to the scheduled hearing, the SFMTA or the applicant ("the Parties") may request a continuance of the hearing date, of up to 30 calendar days in the Hearing Officer's sole discretion.

(2) The Parties may submit any written materials in support of their positions with respect to the denial, issuance with modification or revocation of the permit. Any such materials shall be served on the Hearing Officer and the other Party by personal service no less than 10 calendar days prior to the hearing or by first-class U.S. Mail postmarked no less than 10 calendar days prior to the hearing.

(3) A Party intending to present witnesses at the hearing shall serve a list of these witnesses on the Hearing Officer and the other Party. Such list may be served by personal service or by mail, but in either

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case must be received at least five calendar days prior to the hearing, and include a brief summary of the relevance of each witness to the case.

(4) The Parties may, with the concurrence of the Hearing Officer, alter the hearing schedule and/or deadlines set forth in paragraphs (2) and (3) by prior written agreement.

(5) 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. Such continuances shall not exceed 30 calendar days. Only one such continuance shall be granted either party, absent a determination of good cause by the Hearing Officer. Requests for continuances by either Party shall be denied if received less than seven calendar days before a scheduled hearing, absent good cause. Requests for continuances shall be made in writing, which may include email, if the parties agree to it. The Hearing Officer may request additional information from either party to the proceeding.

(6) The hearing need not be conducted according to technical rules of evidence and testimony of witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer has the discretion to deny the admission of evidence that he or she deems irrelevant. The hearing officer may also request submission of additional evidence from the parties that he or she deems relevant to the case.

(7) Hearings under these procedures shall be open to the public. Public comment may be permitted in the sole discretion of the Hearing Officer. However, the public may be excluded from all or a portion of the hearing to protect the privacy of the appellant or a third party, at the Hearing Officer's sole discretion. In order to protect privacy, the Hearing Officer shall also have the discretion to determine whether documents submitted as evidence will be disclosed to the public, whether or not they are admitted.

(8) **Ex Parte Communications.**

(A) No party or representative or agent of a party may communicate directly or indirectly with the Hearing Officer concerning the substance or merits of a case at any time while the case is pending unless there is notice and an opportunity for the other party to participate. 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 citation.

(B) 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.

(C) 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 citation.

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(9) **Settlement.**

(A) After issuance of a notice of permit denial, issuance with modification, or notice of revocation, the SFMTA may enter into a settlement with the applicant or permittee. The parties may reach a settlement before, during, or after the hearing.

(B) 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 the applicant or permittee or his or her legal counsel or other authorized representative.

(C) By entering into a settlement agreement, the Parties waive any right to seek judicial review with respect to the subject of the settlement agreement.

(D) No evidence of an offer of settlement or of any statement made during settlement negotiations is admissible in a future proceeding under this Article, except that the fact that a matter was settled is admissible if otherwise relevant.

(c) **Burden of Proof.** The burden of proof shall be on the applicant to establish by a preponderance of the evidence that the permit application was improperly denied, the modifications to the permit are not warranted, or the permit was improperly revoked.

(d) **Notice of Decision.** At the conclusion of the hearing, the Hearing Officer shall issue a written decision upholding, overturning or upholding or overturning in part the SFMTA's decision on the application for the permit, or modification of the permit, which shall be based upon the criteria set forth in Section 916 of the San Francisco Transportation Code. 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 evidence or briefing, the Notice of Decision shall be issued within 15 calendar days of such additional submissions. The Hearing Officer shall deliver the Notice of Decision to the applicant and the SFMTA by personal delivery or by first-class U.S. Mail. 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.

(e) **Final Decision.** A decision of a Hearing Officer made under these procedures concerning a Powered Scooter Share Program 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.

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APPROVED:

A handwritten signature in black ink, appearing to read 'E. Reiskin', written over a horizontal line.

Edward D. Reiskin  
Director of Transportation

8/28/2018

Date