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PROCEDURES FOR REVIEW OF PERMIT REVOCATIONS 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 decisions by the Director of Transportation to revoke any permit for good cause, as defined in Section 916(f) of the 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. **Administrative Hearings.**
- (a) **Notice of Revocation:** A Notice of Permit Revocation (“Notice”) issued pursuant to Section 916 of the San Francisco Transportation Code shall be served by certified U.S. mail and by email and shall include:
- (1) The name of the person or entity to whom the Notice is issued (“Respondent”);
 - (2) The date by which the Notice shall take effect, which date shall not be less than 20 calendar days from the date of the Notice, unless the Director finds that there is a serious threat to public health or safety that requires immediate revocation of the Permit. In circumstances that pose such a threat, the Director shall state the public health or safety reasons that require immediate revocation in the Notice, and the date the Notice shall be effective, which date may be no earlier than the date it is served by U.S. certified mail and by email; and
 - (3) Notice of the right to request a hearing, the procedure for requesting a hearing, and notice that failure to submit a timely, written request for hearing will result in revocation of the permit, and that such revocation may be effective from the date the Notice is issued in cases where the Director finds there is a serious threat to public health or safety.
 - (4) A statement that failure to timely request a hearing will result in the Notice of Revocation becoming a final action, which will be a final action of the SFMTA that is not subject to further administrative or judicial review.
- (b) **Procedures for Review of Notices of Revocation.** A Respondent who receives a Notice may request a hearing by submitting to the SFMTA Hearing Officer Section a request for hearing, in writing, within 20 business days of the date that the Notice was served on the recipient. A request for a hearing will stay the revocation until the Hearing Officer issues a final



decision, except in cases where the Director has made a finding that there is a serious threat to public health or safety warranting that revocation take effect immediately. Upon receipt, the SFMTA Hearing Section shall appoint a Hearing Officer.

(1) **Scheduling an Administrative Hearing.** The Hearing Officer shall schedule the administrative hearing for a date no sooner than 30 calendar days after Respondent timely requests a hearing, unless the parties agree to a different schedule, with the Hearing Officer's consent, or the Hearing Officer determines that an expedited hearing is warranted where the Director has made a finding of a serious threat of public health or safety. Either party may request a continuance of the hearing by submitting a written request to the Hearing Officer at least five business days prior to the scheduled hearing. 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. The Hearing Officer must grant or deny the request for continuance within three business days. No continuance of the administrative hearing may exceed 90 days after service of the Notice. At the time the hearing is set, the Hearing Officer shall set a briefing schedule for the parties and shall issue requirements regarding the length and format of the briefing, including the complaint and response referenced below.

(2) **Complaint.** By the deadline in the briefing schedule set by the Hearing Officer referenced above, the SFMTA must provide the Respondent with a written Complaint consisting of a list of each alleged violation or the basis for revocation, the alleged facts that establish each violation or support revocation, and a short summary describing the determination made by the SFMTA. If the Notice included a finding that there is a serious threat to public health or safety, the Complaint shall include evidence to support this finding. The Complaint shall include a list of the witnesses, if any, that the SFMTA will present at the hearing.

(3) **Response to Complaint.** By the deadline in the briefing schedule set by the Hearing Officer referenced above, the Respondent may provide the SFMTA and the Hearing Officer with a written response to the Complaint, along with any additional information relevant to the Notice. The Response shall include a list of the witnesses, if any, that the Respondent will present at the hearing.

(4) **Experts.** Should either party seek to use expert testimony at the hearing, the offering party shall have the burden of demonstrating that the proposed testimony is admissible pursuant to California Evidence Code Sections 801 and 802 prior to the hearing.

(c) **Presentation of the Case.** The following procedures shall apply to hearings held under these procedures:



(1) The SFMTA shall make the initial presentation of its case at the hearing, and shall have the burden of proving, by a preponderance of the evidence, that the Director's decision to revoke the permit was based on good cause as set forth in Section 916(f) of the San Francisco Transportation Code. The Respondent may present evidence following the SFMTA's presentation.

(2) Following presentation of evidence, each party shall have at least five minutes to present their rebuttal arguments, if any.

(3) During the hearing, subject to the Hearing Officer's discretion to limit evidence to that which is relevant to the proceeding and limitations on expert testimony above, either party may present its case by means of oral or documentary evidence. If warranted, the Hearing Officer may allow the parties to submit rebuttal evidence, and cross-examine adverse witnesses, pursuant to procedures that the Hearing Officer determines. At the discretion of the Hearing Officer, the parties may submit proposed findings to the Hearing Officer, pursuant to procedures that the Hearing Officer determines.

(4) The Hearing Officer shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in these procedures. The Hearing Officer has the discretion to deny the admission of evidence that the Hearing Officer deems irrelevant. Relevant evidence and/or argument must be based on the issues set forth in the Notice. The Hearing Officer does not have the power to issue subpoenas. The hearing will be conducted as an informal hearing, and the formal rules of evidence will not apply, except with respect to expert testimony as set forth above.

(d) **Notice of Decision.**

(1) The Hearing Officer shall issue a written Notice of Decision ("Decision") within 30 days of the date of the hearing upholding or overturning the Notice. The Decision shall be based upon the criteria set forth in San Francisco Transportation Code Section 916(f), include findings, and shall set forth evidence in support of each finding. The Hearing Officer shall serve the full text of the Decision on Respondent by first-class U.S. mail, with a copy of an affidavit or certificate of mailing, and by email no later than one business day following the issuance of the Decision. The deadline for the issuance of a decision may be extended if the Hearing Officer requests additional evidence or briefing from the parties subsequent to the hearing. If additional evidence is submitted, then the decision will be issued within 30 days of the last submittal.



(2) The Hearing Officer's decision shall take effect on the date that the Decision is served on the Respondent. In the case of a Decision overturning the Notice, the SFMTA shall reinstitute the permit or modification within 15 business days of the Decision.

(e) **Ex Parte Communications.**

(1) No person or agency may communicate directly or indirectly with a Hearing Officer at any time while a case is pending unless there is notice and an opportunity for the other party to participate.

(2) 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.

(3) 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 if they are consistent with this Section or are on policy matters that do not involve any pending case regarding any individual permit or permit application.

(f) **Hearings Open to Public.** Hearings under these procedures shall be open to the public, and public comment may be permitted in the sole discretion of the Hearing Officer, but the public may be excluded from all or a portion of the hearing when, in the sole and absolute discretion of the Hearing Officer, exclusion is necessary to protect the privacy of the Respondent or a third party. The Hearing Officer may also determine that documents submitted to the Hearing Officer will not be disclosed to the public in order to protect the privacy of the Respondent or a third party.

(g) **Notices.** Unless otherwise stated in these procedures, service of written materials or requests shall be deemed complete upon the date of mailing by U.S. first class mail and email, unless the parties agree to service only by email, in which case service will be deemed complete upon the date the email is sent.

(h) **Failure to Appear.** Respondent's failure to appear at a scheduled administrative hearing in person, through a representative, or by written submission, will result in imposition



of the proposed discipline or taking of the proposed action, either of which will be a final action of the SFMTA that is not subject to further administrative or judicial review; provided, however, that the Hearing Officer shall have the discretion, upon Respondent's showing of good cause, to excuse such failure to appear.

(i) **Right to Judicial Review.** A decision of a Hearing Officer made under these procedures 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.

APPROVED:

A handwritten signature in blue ink, appearing to read 'Jeffrey Tumlin', written over a horizontal line.

Jeffrey Tumlin
Director of Transportation

December 19, 2019

Date