BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of GEORGE HORBAL, Appellant(s)

vs.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA), Respondent

Appeal No. **21-064**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on July 14, 2021, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the REVOCATION on July 9, 2021, of a Taxi Medallion (George Horbal does not have a current California Driver's license and is not eligible to possess an A-Card. Without these licenses the taxi medallion can be revoked pursuant to the Transportation Code. The SFMTA Taxi Services' Notice of Nonrenewal is upheld).

MEDALLION NO. 1303

FOR HEARING ON September 1, 2021

Address of Appellant(s):	Address of Other Parties:
George Horbal, Appellant(s) c/o Carl Macmurdo, Agent for Appellant(s) 431 Frederick Street, Apt. #1 San Francisco, CA 94117	N/A

Date Filed: July 14, 2021

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 21-064

I / We, **George Horbal**, hereby appeal the following departmental action: **Decision on Reconsideration: SFMTA v. George Horbal** (**Taxi Medallion No. 1303)** which was issued by the **SFMTA Hearing Section** on **July 9, 2021**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **August 12, 2021**, **(no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, Philip.cranna@sfmta.com and jim.emery@sfcityatty.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **August 26, 2021**, **(no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, cmac906@gmail.com and georgehenrygh73@gmail.com.

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

Only photographs and drawings may be submitted by the parties at the hearing.

Hearing Date: **Wednesday, September 1, 2021, 5:00 p.m.,** via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boaYou may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

Filed electronically by Carl Macmurdo, agent for appellant.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SFMTA HEARING SECTION

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,	
vs.	**DECISION ON RECONSIDERATION**
GEORGE HORBAL, Respondent	

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency ("SFMTA") after the Complaint was sent to respondent George Horbal on or about October 26, 2020. The SFMTA Complaint alleges that Mr. Horbal had not taken the necessary measures to renew his status as a qualified taxi medallion holder, and on that basis the SFMTA's Taxi Services had notified Mr. Horbal on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Horbal by this Hearing Section for April 27, 2021, under the provisions of Article 1100 of the SFMTA's Transportation Code. That Article governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On April 27, 2021, Mr. Horbal appeared via telephone at the time of this hearing, and the Taxi Services manager, Philip Cranna, and its witness, analyst Danny Yeung, appeared by video, along with the undersigned administrative hearing officer, and at that time testimony from each of the parties was received into evidence.

II. THE COMPLAINT

In its Complaint the SFMTA's Taxi Services alleges that based upon "Post-K" provisions adopted by the Transportation Code ("TC"), taxi medallion holders are subject to a full-time driving requirement and must hold an active A-Card in order to retain their legal status as medallion holders. Additionally, the Transportation Code also requires that for an A-Card permit to be granted, a full-time driver must also have a valid California driver's license.

In terms of Mr. Horbal, the Complaint stated that because he no longer had a current California driver's license, he could not qualify for an A-Card, and as a result the renewal of medallion #1303 could not be authorized under the relevant provisions of the Code.

III. APPLICABLE LAW

Under the provisions of Article 1100 of the Transportation Code, the following statutory authority forms the relevant basis for this decision, including the Transportation Code's definitions of "A-Card," "Medallion Holder," "Notice of Nonrenewal," and "Permit Holder."

Also relevant to this case are these Article 1100 provisions:

- TC §1103(c)(2)(C), regarding driver qualifications
- TC §1103(c)(3), regarding the lapse of active permit status;
- TC §1105(a)(1), regarding permits required;
- TC §1105(a)(3), regarding permits as privilege, not property of the driver;
- TC §1105(a)(5)(A), regarding the duration of permits;
- TC §1105(a)(6), involving compliance with laws and regulations;
- TC §1109(a)(1), re required affiliation with Color Scheme;
- TC §1109(c)(1), regarding the full-time driving requirement;
- TC §1109(e)(1)(A), involving various aspects of medallion operation;
- TC §1116, covering surrender of medallions for consideration.

IV. TESTIMONY

A. SFMTA Testimony and Evidence Presented: Danny Yeung:

Danny Yeung, an administrative analyst in the SFMTA's Taxi Services, testified to the origin and reliability of the exhibits offered by Taxi Services at the hearing. The exhibits included a driver profile of Mr. Horbal (Exh. A), the Division's Notice of Nonrenewal (Exh. B), and the written statement of George Horbal dated October 19, 2020 (Exh. C). Mr. Yeung confirmed that the evidence of record established that Mr. Horbal had not had a current California driver's license for at least the previous two years, and that his A-Card had expired in approximately December of 2017, and had never been renewed since that time.

B. George Horbal:

Mr. Horbal testified that he is a resident in the state of California, and that he has not been physically capable of driving for a living due to his physical health currently wheelchair-bound due to renal failure and a cancerous condition involving one of his legs.

Mr. Horbal testified that he understands that his medallion (#1303) had been used by Yellow Cab Company, as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that allow this sort of operational transfer to a Color

Scheme from the original medallion holder. He wants to retain his medallion as source of retirement income.

Mr. Horbal confirmed that he currently does not have a California driver's license and that his A-Card has not been renewed since 2017. Essentially, Mr. Horbal acknowledges that the legal provisions that apply to taxi drivers in San Francisco apparently establish that due to his current status, his medallion may not be renewed, and he understands that it may have already been confiscated.

In this respect Mr. Horbal does not seriously dispute the Taxi Division's testimony or evidence, or the features of the Transportation Code that appear to require medallion confiscation (i.e. "nonrenewal") under some circumstances. However, Mr. Horbal believes that Federal ADA law protects a medallion holder's rights where a taxi driver can no longer drive due to a permanent disability, and that ADA law applies under his own circumstances to protect his right to retain his medallion.

Mr. Horbal stated that he satisfied the requirement of an *intention* to drive until his health conditions would not allow him to drive anymore. He believes that the medallion is a business license and is separate from the A-card, which he describes as a work permit. He maintains that there should be a residual monetary value to medallion #1303, which could have been paid to him in exchange for the surrender of this permit, and that there should be current circumstances in San Francisco which would allow him to sell or transfer his medallion to a third party for a current market value, just as other drivers have done in the past as holders of their own medallions.

C. Carl Macmurdo

Mr. Macmurdo testified that he has been a taxi driver for over 30 years, that he is a Prop-K medallion holder, and is the president of the Medallion Holders Association. He testified that the medallion is equivalent to a business license, and is separate from the A-card requirement and the requirement to drive full-time. He referred to Prop-K and Quentin Kopp's writing of the law, and specifically that the applicant for a taxi medallion had to swear only to *intend* to be a full-time driver. He argued that the taxi medallion holder's sworn intent to drive on a full-time basis was the only requirement, and that a driver's intent to drive has since been misconstrued by the SFMTA's interpretations of Article 1100 of the Transportation Code.

Because of the current health pandemic, Mr. Macmurdo stated that Mr. George Horbal does not need to have a current or active A-card in order to be a medallion holder, because the full-requirement driving requirement is currently suspended. On that basis he testified that Mr. Horbal's medallion should not be confiscated by the SFMTA.

D. Dennis Korkos

Mr. Korkos testified that he has been a taxi driver for four decades, and has been a medallion holder for two decades. He echoed the statements of both George Horbal and Carl Macmurdo regarding their understanding of a driver's sworn *intent* to drive—as opposed to having an actual ability to drive on a full-time basis. He stated that one's sworn intent to drive does not mean that medallion holders are required to drive for one's entire life span. He equated the medallion to a business license, using the analogy of a bar owner holding the license and having the ability to hire bartenders for part-time work. He questioned whether Mr. Horbal had been given proper advance notification by the SFMTA's Taxi Services concerning its effort to revoke his medallion

The following documents offered by Respondent Horbal were admitted in the record:

- Memorandum, Thomas Owen to Mariann Costello, 4/25/2000
- *SF Taxi Permitholders, et al. v. City and County of San Francisco*, CA Court of Appeals, 1st District, Unpublished Decision, 7/11/2002
- Proposed Resolution, Taxi Commission, 10/08/2002
- SF Chronicle, Article regarding 11th & Market St Accident, 3/26/2003
- SFMTA Board Resolution No. 09-138 (Re *Slone v. Taxi Commission*), 9/9/2009
- *Sloane v. Taxi Commission*, U.S.C.A, 9th Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- Written statement to SFMTA Director Tumlin re elimination of TC § 1109(c), 5/7/2020
- Medallion Holders Assn. (MHA), Medallion Revocation Hearing Arguments, 6/7/2021
- 1978 Voter Pamphlet Summary of Proposition K (no date)
- Text of Proposition K Provisions (no date)
- Prop-A of 2007: Taxi Commission Authority Transfer to SFMTA (no date)
- SF Taxi Commission, Medallion Holders by Date of Birth (no date)

V. PROCEDURAL HISTORY

On June 9, 2021, the undersigned denied Taxi Service's Notice of Nonrenewal as to Mr. Horbal's medallion. The decision was based upon certain equitable considerations (as noted below), which relied upon the medallion surrender provisions of TC §1116, which were found to be unfairly sidelined by the apparently overriding requirements of the Transportation Code for Post-K medallion holders to renew and maintain current A-Cards.

On June 22, 2021, Deputy City Attorney James Emery sent correspondence to the undersigned requesting reconsideration of the Statement of Decision in the Horbal case. On the basis of arguments presented at that time, on June 22, 2021, the undersigned filed a Notice of Withdrawal of Decision, which was sent to the parties.

On that same date, correspondence was sent to George Horbal, advising that our office had received a request for reconsideration. Mr. Horbal was further advised at that time that he would be given until July 1, 2021, to respond or otherwise comment upon the City Attorney's request. On June 27, 2021, Mr. Horbal advised the parties that he intends to appeal this decision and his case to the San Francisco Board of Appeals.

VI. FINDINGS

1. Respondent Without California Driver's License and A-Card

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent George Horbal does not have a current California driver's license, and as a result no longer is eligible to possess a current A-Card as that driver's permit is defined by the SFMTA's Taxi Division.

By his own admission, Mr. Horbal can no longer drive a taxi or any vehicle on a regular basis. Because Mr. Horbal cannot drive, his A-Card cannot be renewed pursuant to the provisions of TC §§1103 and 1105, as noted above. Without a current California driver's license, an A-Card cannot be maintained, and without a current A-Card, a taxi driver's entitlement to a holding a taxi medallion here is or may be relinquished. On that basis the nonrenewal of Mr. Horbal's medallion is now appropriate under the circumstances.

VII. EQUITABLE CIRCUMSTANCES RELATING TO DECISION

While current conditions nullify any monetary transfer value of any held medallions in the City, that situation may change in 2021, and it remains possible for the orderly transfer of taxi medallions to resume here. If medallion transfers resume, it may be possible for some medallion holders to enjoy a surrender value of their medallions when the moratorium on transfers no longer obtains.

Currently, and at least since 2016, there has been no market for medallions in San Francisco, largely due to the influx of TNC operations, and due to the litigation between the San Francisco Federal Credit Union and SFMTA. That litigation has resulted in a moratorium in the sale and transfer of taxi medallions based upon an established fixed price of medallion surrender as set forth in TC §1116(b)—which greatly exceeds the current market priceof a local taxi medallion. As long as the litigation continues, the medallion surrender price remains at $200,000, based upon the price of a medallion to a new transferee of $250,000. At this fixed price, medallion transfers are not expected to recur here until such time as conditions dramatically change following the conclusion of the current litigation.

Until the medallion surrender program is ended or otherwise amended by the Board of Directors, the existing provisions of TC §1116(a)(1)(A) provide an ongoing "eligibility" for the surrender of their medallions to any drivers with disabilities that prevent the full-time driving requirement for both "Pre-K" and "Post-K" medallion holders, as mandated by TC §1116(c)(1). TC section 1116 also extends this ongoing eligibility to drivers who have turned 60—although it is apparent that this age eligibility section of the Transportation Code does not extend to "Pre-K" medallion holders.

On the basis of this uncertainty in expectations on the part of medallion holders for some eventual surrender value in their medallions, our Hearing Section officers would have preferred to continue these cases, or to otherwise defer their decisions until the SFMTA Board might have had the opportunity to definitively decide the issues of medallion surrender—or until the current litigation between the Federal Credit Union and the SFMTA is resolved, which would presumably allow medallion transfers to resume.

But inasmuch as our Hearing Section does not have the inherent authority to ignore the express renewal provisions of Article 1100 the Transportation Code, or to postpone these hearings, and because there is no current transfer value in any taxi medallion in this jurisdiction (and none on the near horizon), our hearing officers will continue to decide these nonrenewal cases on a case-by-case basis but, in general, may have no recourse other than to follow the existing Transportation Code provisions in cases involving Notices of Nonrenewal, regardless of the equitable considerations that have been outlined here.

VIII. ORDER

By reason of the Findings stated above, the Taxi Services Notice of Nonrenewal is upheld, and medallion # 1303 is hereby revoked by operation of the provisions of the Transportation Code.

Dated this 9th day of July 2021

RJ Sebastian

Rudy J. Sebastian
Neutral Hearing Officer
Supervisor
SFMTA Hearing Section

RIGHT OF REVIEW

Under the provisions of the San Francisco Transportation Code, a decision of a hearing officer is a final administrative decision. Any party or entity adversely affected by this decision may seek review of the decision by filing an Appeal in accordance with the provisions and the 15-day timeline set forth in the rules provided by the San Francisco Board of Appeals.

BRIEF SUBMITTED BY THE APPELLANT(S)

BOA Appellant Brief for George Horbal, taxi medallion # 1303

Introduction

Appellant George Horbal and career taxi driver/medallion holder colleague, Carl Macmurdo, jointly submit this brief. Mr. Horbal drove taxi in San Francisco for 43 years before disabilities set in. He has survived episodes of cancer and renal failure and now is confined to a wheelchair.

Case History

1. On September 28, 2020, SFMTA ("the Agency") sent Mr. Horbal a letter which reads in part,

"**NOTICE OF NONRENEWAL OF PERMIT is hereby given due to the following reason(s):**

1105(a)(5): Your post-K Medallion cannot be renewed because you do not have a valid A-Card. A Medallion Holder who is subject to the Full-Time Driving Requirement must have a valid A-Card."

The above statement may summarize an Agency policy interpretation, but it does not reflect the actual language in Transportation Code (Tr. Code) section 1105(a)(5). Regardless, as argued later in our brief, **we believe Mr. Horbal is no longer actually subject to a driving requirement.** He drove taxi for 43 years but now is disabled from **driving**--- but not from **operating a business license.**

2. Mr. Horbal was granted an administrative hearing in the matter on April 27, 2021.

3. In his attached ruling dated June 10, 2021 **(attached as: "G. Horbal Statement of Decision.")**, Hearing Officer, Rudy Sebastian, **denies** the Agency's nonrenewal of Horbal's permit.

4. Shortly thereafter, the assigned deputy city attorney for the Agency contacted the SFMTA Hearing Officer section, apparently suggesting the need to withdraw and reconsider the Horbal Decision **(attached as: "Emery to Sebastian email.")**

5. Mr. Sebastian withdrew his original Decision. On June 22, 2021, the Hearings section advised Horbal he had until July 9 to dispute the withdrawal action. On July 8, we submitted a six-page response. To avoid repetition, we will articulate our arguments later in this brief rather than attach our response letter.

6. On July 9, Mr. Sebastian issued his "Decision on Reconsideration" in which he **upholds** the Agency's revocation of Horbal's medallion **(attached as: "Horbal 1303 Decision on Reconsideration.")** This is the same **"Determination"** --- a document already copied to your Board --- which we herein appeal. The Determination letter erroneously specifies July 1 --- rather than July 9 --- as the deadline set for Mr. Horbal to have disputed the withdrawal decision. It is clear our response was never considered. We see this as an honest oversight by the Hearing Officer. We especially commend Mr. Sebastian for his courage, circumspection, and compassion throughout the entire process.

We are including a portion of Tr. Code section 1120 **(attached as: "Tr. Code sec. 1120.")** We believe section 1120(e)(2) mandates that a Hearing Officer's ruling be effective on the date it is issued, subject only to an elective appeal to your Board by the non-prevailing party. Also, section 1120(f), ("*Ex Parte* Communications"), generally disallows a party from having unilateral contact with the Hearing Officer, and we feel the Agency likely violated this provision.

As such, in the instant case the Agency --- rather than Mr. Horbal --- should have been the Appellant, and thereby the party needing a super-majority vote by your Board to overturn the underlying Determination. Notably, a successful appeal by Mr. Horbal will moot this point.

Medallion Definition and History

The **medallion** is a valuable **business license** whose owner/holder must provide the public with continuous access to an associated taxicab. San Francisco holds periodic Public Convenience and Necessity (PC&N) hearings designed to properly balance the public need for adequate service against the need for taxi drivers and other stakeholders to earn a reasonable profit.

After the 1929 Great Depression, many thousands of New York City residents began using their personal cars as *de facto* taxis to generate income. A vast over-supply of on-demand, for-hire vehicles caused drivers to under-price one another in a race to the bottom. Unsafe, chaotic conditions prevailed. In response, New York State legislators passed the 1937 Haas Act, which limited the number of licensed taxis and also defined rates of fare. Such was the genesis of the taxi medallion system. Unfortunately, in NYC, San Francisco, and elsewhere

the proliferation of Transportation Network Company (TNC) vehicles such as Uber and Lyft has replicated the pre-Haas Act conditions from ninety years ago. Medallion value has tanked for now.

San Francisco Medallion History

Prior to 1978, San Francisco medallions were bought and sold. Medallion owners/holders were not required to personally drive. These are known as **"pre-K medallions."**

In 1976, Westgate Corporation --- which owned San Francisco Yellow Cab and its hundreds of medallions --- went bankrupt. The Bankruptcy Court seized the permits, thus taking hundreds of taxis off city streets overnight. This caught city Supervisors completely off guard. To prevent future recurrence, Supervisor Quentin Kopp authored Proposition K in 1978, and the voters passed it into law. Prop. K phased out corporate medallion ownership. Prop. K also eliminated the buy-sell business model, leading to unintended consequences including lack of medallion holder entry opportunity and exit strategy.

Prop. K, medallion applicants pledged an intention to drive taxi full-time and paid an application fee. Thousands of applicants signed onto a waiting list, and the typical wait time was about 13 years. Medallions were issued for nominal processing fees. These permits are called either "**Prop. K**" or "**post-K medallions.**"

In 2010, the medallion buy-sell model resumed. Proposition A of 2007 assigned a new taxi regulator (SFMTA) with the authority to make this change. The sales price was set at $250,000 , although the 200 applicants highest on the waiting list could purchase at $125,000. Permits bought under this Medallion Sales Program are generally referred to as purchased, or **"P medallions."** Initially, there were many more willing buyers than sellers. Within a few years, however, tens of thousands of TNC vehicles began flooding the streets --- able to under-price taxi rates due to billions of dollars in venture capital subsidies --- and medallion value plummeted. Since about 2016, the Medallion Sales Program has been entirely dormant.

Summary of Litigation Regarding the "Prop. K Full-Time Driving Requirement"

A brief historical summary follows describing litigation resultant from the city's regulatory interpretation that Prop. K medallion holders (MHs) have a never-ending, mandatory full-time driving requirement. We provide more details in the later **"ARGUMENTS"** section.

1. In November 2000, the Permit Holders and Drivers Association (PDA, later renamed MHA), filed a lawsuit against the City (CCSF) challenging its "never-ending driving requirement" policy. Superior Court Judge, David Garcia, ruled in CCSF's favor based on its Demurrer. On appeal, the Appellate Court **reversed** the decision **(attached as "PDA (MHA) v. CCSF court register**.") In its murky ruling, the Court ordered some degree of disability protection for Prop. K MHs. We never received clear policy details, although the then-regulator Taxi Commission did begin accepting and approving some requests for temporary, limited exemptions from the "driving requirement" for disabled MHs.

2. Around 2003, the taxi commission revoked four medallions based on the inability of career taxi drivers//MHs to drive any longer ***because*** they had become disabled. Your Board unanimously overruled the Agency revocation action in all four cases (Edmund Jung, Mia Rivera, Mark Hollander, Joel Hollander.)

3. Around 2007, the taxi commission readied to resume revocations against disabled MHs. Rather than preparing once more for multiple BOA hearings, National Cab Company --- which operated medallions for many disabled MHs --- instead filed a Federal Court lawsuit alleging CCSF violations of the year 1990 Americans with Disabilities Act (ADA). National Cab entered MHs William Slone and Michael Merrithew as its named plaintiffs.

District Court Judge, Jeffrey White, granted CCSF's Motion for Summary Judgment. Plaintiffs appealed to the Ninth Circuit Court of Appeals. After numerous briefings, the parties agreed to mediation around September 2009. In 2010 the parties signed a stipulated settlement agreement **("*Slone* Agreement.")** A key *Slone* Agreement aspect is to provide disabled MHs with financial compensation as they exit the industry, rather than summarily revoking their permits. During this same time frame, the Agency developed policies for its new Medallion Sales Pilot Program (MSPP.) The SFMTA Board approved the MSPP in 2010 and voted for a permanent Medallion Sales Program two or three years later.

4. In 2020, the Agency once again embarked on an effort to revoke the permits of disabled MHs, leading to the current Horbal appeal. Multiple other MHs similarly situated as Mr. Horbal are also being processed through their administrative hearings, and your Board likely will soon be hearing additional appeals on the same basic issues presented herein.

ARGUMENTS

Argument 1: Due to a year 1988 miscodification, the Transportation Code mandates a "never-ending, mandatory driving requirement." This provision contravenes Prop. K's explicit language.

Section 2(b) in Prop. K requires that a medallion applicant take an *oath-of-intention* **(attached as: "Prop. K of 1978.")** By dictionary definition, "intention" refers to a person's "goal" or "aim" or "purpose." Accordingly, the Agency cannot revoke a medallion holder's permit based on non-driving without first considering extenuating circumstances and mitigating factors. **A case-by-case analysis is required**. Prop. K language does not even remotely suggest there is an "endless driving requirement."

In 1988, the Board of Supervisors --- which had taxi jurisdiction at the time, with direct oversight assigned to the Police Commission --- codified Prop. K into the Municipal Police Code (MPC) with nearly fifty pages of amendments effective March 1989. In a clear-cut case of **miscodification,** MPC sec. 1090 **mandates** an adverse action against a MH who "has ceased to be a full-time driver." It explicitly disallows consideration of any extenuating circumstances **(attached as "MPC sec. 1090.") This egregious miscodification contravenes Prop. K by substantively and illegally *altering* that law.**

On March 1, 2009, SFMTA took over taxi jurisdiction. Many MPC entries were folded into the Transportation Code. The contrived "never-ending, mandatory driving requirement" is now incorporated as Tr. Code sec. 1109(c)(1), which reads: "Every Medallion Holder who is a natural person and who acquired his or her Medallion between June 6, 1978 and March 27, 2010 shall be a Full-Time driver."

Later, we detail how this "driving requirement" interpretation is inhumane to MHs, extremely dangerous to the public, and in violation of disability law. Until and unless the Agency is forced to amend this code section,

many cases similar to Mr. Horbal's likely will end up before your Board. **Please consider opining on this specific argument in your ruling.**

Argument 2: Current Agency policy violates the year 1990 Americans with Disabilities Act (ADA.)

Although technically a business license itself, the A-card is more of a **work permit** authorizing the permittee to drive a taxi. By contrast, a medallion clearly is a **business license**, The medallion holder ensures compliance with a slew of regulatory requirements --- vehicle purchase and repair, insurance, hiring drivers and shift-scheduling, radio dispatch, etc. --- while ***operating a business***. The Agency's interpretation of an endless MH "driving requirement," however, transubstantiates the medallion into mostly just another work permit.

In April 2000, a deputy city attorney sought to bolster the Agency's "driving requirement" interpretation. In a memo sent to the taxi commission president **(attached as: "Owen to Costello ltr."),** Mr. Owen misleads the taxi commissioners into believing Prop. K specifies **a mandatory driving requirement r**ather than **an applicant's**" **pledge** to drive full-time. He then suggests the commission might designate full-time driving as an **"Essential Eligibility Requirement"** (EER) for Prop. K medallion holders.

An EER is a program element so vital that ADA protections are waived. For example, because firefighters must race up stairs during fires, **"extreme physical fitness"** is a **valid EER** for that job. Wheelchair users cannot apply. However, assigning the same fitness criterion to a Public Information Officer position in a city fire department, wherein the job duties are entirely sedentary in nature, creates a **bogus EER** which unlawfully discriminates against disabled persons.

In October 2002, the taxi commission approved the **spurious EER** Mr. Owen had suggested **(attached as: "EER.")** The EER document is replete with ambiguous language. For unclear reasons, a term never before used in the taxi industry --- **"Continuous Driving"** (rather than "Full-Time Driving") --- is designated as the EER.

The Ballot Simplification Committee analysis in the 1978 Voter Pamphlet puts the lie to this phony EER **(attached as: "BSC 1978 Prop. K analysis.")** Prop. K's purposes are succinctly stated: to disallow medallion

sales and to phase out company permit ownership. Requiring elderly or disabled MHs to drive is not mentioned. In Prop. K itself, the term "full-time driving" appears only in the section titled, "The Application For a Permit."

Pressuring elderly and feeble MHs to drive beyond their safe capacity is inhumane and also very dangerous to the public. Only five months after the EER Resolution was passed, an elderly MH lost control of his taxi on a rainy night. The taxi slid onto the sidewalk and crushed two people at an ATM machine. The horrific accident is is described in a newspaper article **(attached as: "accident, 11th & Market St.")** Aside from the victims' tragedy, Yellow Cab Co-op had to sign over its property in a $14,000,000 settlement, eventually filing for bankruptcy in 2016 without ever fully recovering financially. Upon memory and belief, the feeble MH drove that night against his will and beyond a reasonably safe capacity solely to retain his permit by complying with the "driving requirement." Now, the Agency has resumed enforcing its spurious EER. **We ask your Board to help end this malfeasant policy**. Otherwise, scores of feeble, elderly MHs not yet fully disabled will be put in the same awful situation faced in 2003 by the MH who caused the horrible accident.

The Agency has devised a connect-the-dots method which cross-references various Tr. Code sections to allow itself the means and ability to confiscate permits from disabled MHs. Through its often arbitrary and capricious Tr. Code entries, the Agency asserts not only that a MH cannot renew a medallion annually without having a valid A-card, but also that a MH first needs a current California Driver's License (CDL) to qualify for an A-card. Typically, however, persons with major disabilities do not qualify for a CDL. **Via this ploy, the Agency has incorporated or institutionalized discrimination against disabled MHs**.

By way of hypothetical example, the Agency policy requires revocation in the case of a MH who in the act of driving a taxi is rear-ended and paralyzed by a drunk driver. Agency policy egregiously violates ADA. Also, **nothing in Prop. K suggests that a disabled MH needs a CDL to operate a business license.**

Enclosed is a taxi commission data chart dated 2004 in the lower left corner. It shows the age at which Prop. K medallion applicants received their permits **(attached as: "MH age upon receipt.")** Virtually all permittees listed are already senior citizens upon finally receiving a medallion. Mr. Tognotti is age 78. We point this out because an Agency representative at recent administrative hearings has asserted that Prop. K MHs, "understood they had to turn in their medallions when they were unable to drive any more."

During the past three years or so, the Agency has constantly emphasized that ADA accommodations are allowed for **temporary** disabilities but not for **permanent** ones. ADA law does not support this contention. Additionally, the line differentiating temporary and permanent disabilities often is blurry.

Interestingly, in 2017 the Agency's Taxi Services unit designed an explanatory chart for an SFMTA Board presentation **(attached as: "SFMTA Medallion Definition and Count.")** The relevant entry refers to a compensation program described below as the **"Surrender Program."** It states that Prop. K MHs can participate "… if the medallion holder is at least 60 years old or has a **permanent disability"** (our emphasis.) The chart shows 494 MHs as being signed onto the Surrender Program waiting list.

Finally, we note that eighteen years ago your Board unanimously overturned all four Agency medallion revocations against disabled MHs. Those cases involved the same basic issue before you now in Mr. Horbal's appeal. We have enclosed a partial transcript from a year 2003 hearing **(attached as: "M. Rivera 2003 BOA Hearing excerpts.")**

Argument 3: The *Slone* Agreement applies to Mr. Horbal and all other similarly situated MHs.

As noted earlier, after Judge White granted CCSF's Motion for Summary Judgment in the Federal ADA lawsuit, National Cab appealed to the Ninth Circuit on behalf of named plaintiffs Slone and Merrithew. After numerous briefings, the parties agreed to mediation in September 2009.

In August 2010, the parties signed a stipulated Settlement agreement **("*Slone* Agreement," attached as: "*Slone* v. Taxi.")** In exchange for National Cab withdrawing its ADA litigation, Merrithew was allowed to sell his medallion under the developing MSPP. Mr. Slone, instead, would apply to the new **"Surrender Program"** waiting list (see below.). Mr. Slone simultaneously would avail himself of a newly-revised policy which greatly expanded disability-related exemptions from the Agency's mandated driving requirements **(attached as: "Resolution No. 09-138.")** **Upon belief and information, the parties understood that a large number of future carbon copy cases would arise and be handled in the same manner.**

Related to the *Slone* Agreement, the Agency created a policy to allow disabled MHs to gracefully exit the industry with compensation. Because Prop. K medallions technically are *non-transferable, t*he Agency needed to structure a process in which it functioned as an intermediary After identifying a buyer, the Agency would pay the outgoing MH $200,000 under a "surrender-for-consideration" policy now commonly referred to as the "**Surrender Program**." The Agency next would promptly sell the permit for $250,000.

As of 2010 --- when the MSPP began --- willing buyers greatly outnumbered sellers. Within a few years, however, widespread TNC operations crushed medallion value and completely reversed the buyers-to-sellers ratio. We attach excerpts from Tr. Code section 1116 describing the Surrender Program **(attached as: "Tr. Code sec. 1116, partial.")** In 2009, the Agency expanded MH disability relief by issuing Resolution No. 09-138, in part to help the forthcoming Surrender Program succeed. Upon belief, a purpose of Resolution No. 09-138 is to allow disabled MHs a chance to recover and possibly resume driving, meanwhile retaining the permit for at least three years --- at which time the Agency might require a compensated permit "surrender."

On at least two occasions, MHs with disabilities asked Mr. Macmurdo to join their advice appointments with Paige Standfield --- the Agency's permit compliance manager at the time. The germane entry in Resolution 09-138 is item number six, which allows three years of driving requirement relief **for the same condition** (our emphasis.) Ms. Standfield advised that MHs could 'string together" different qualifying maladies in order to keep the permit beyond a three-year limit while awaiting their turn to participate in the Surrender Program. For example, a MH with an enlarged prostate gland, a deteriorating hip, and high blood pressure might qualify for nine years of relief. We applaud Ms. Standfield for her compassion in trying to help disabled MHs retain their permits until such time that the Medallion Sales Program might once again become active.

Also at issue is the lack of proper notification made by the Agency to affected MHs. For example, Mr. Horbal was unaware of Resolution 09-138 until Mr. Macmurdo asked him three months ago whether he had ever filed for relief under that policy. The Agency never sent a letter advising MHs of the expanded disability relief defined in Resolution 09-138. Also, no mention of that Resolution is contained or footnoted in the Tr. Code. Under the circumstances, if you were to rule against Mr. Horbal on his appeal, he wants to apply for the relief allowed by Resolution 09-138.

Mr. Macmurdo has participated in three administrative hearings so far and believes that the Agency personnel who initiated the current wave of revocation attempts against disabled MHs were unaware of the *Slone* Agreement until he brought it to their attention during one of those hearings. The city's *Slone* Agreement signatory is Vince Chhabria, now a Federal Judge. **We assert that the revocation of Mr. Horbal's permit violates the intent of the *Slone* agreement and ask that you overrule the Agency**.

Argument 4: Many MHs allowed their A-cards to lapse based on specific advisement from Taxi Services staff that A-card renewal was unnecessary for disabled MHs.

Numerous disabled MHs assert that the Agency's permit compliance manager, Ms. Standfield, had advised them it was unnecessary to renew their A-card. Others heard about that policy advice through word-of-mouth.

The Agency unnecessarily treats disabled career driver-MHs with **lapsed** A-cards as though they were first-time applicants --- who actually *do* need a CDL to drive taxi. There is no logical reason, however, to require a disabled MH to have a CDL. Many or most may not qualify for a CDL due to their disability, anyway.

One MH had Ms. Standfield document her advice in writing **(attached as: "Paige S. advisory to CR.")** Many MHs have allowed their A-card to lapse based on that advice. Numerous MHs have relocated to more affordable cities based upon that advice and are unlikely to qualify for a CDL in the future.

Miscellaneous arguments and information

1. **Argument:** The Agency's case against Mr. Horbal relates directly to his failure to comply with an ostensibly sacrosanct, "never-ending driving requirement." However, the Agency suspended the "driving requirement" for year 2020 for **all** MHs.. Yet, 2020 is the very year in which Mr. Horbal is being charged with "driving requirement" non-compliance. The hiatus is due to the shelter-in-place order from the city's Health Officer associated with the Covid-19 pandemic **(attached as: "Temporary Suspension of the Post-K driving requirement due to COVID-19.")** We argue that **the Agency cannot revoke Mr. Horbal's permit based on its stated rationale, given that its case is integrally related to his non-driving in 2020.**

2. Two taxi industry groups --- San Francisco Taxi Coalition and Medallion Holders Association --- jointly signed a request letter in May 2020, asking the SFMTA Board either to eliminate or amend its Tr. Code sec. 1109(c) "driving requirement" policy **(attached as: "Request ltr., SFMTA Board, 2020.")** The final paragraph summarizes the letter. The SFMTA Board never responded.

3. We believe the Agency's actual motivation in revoking Prop. K medallions right now is **financial**. The proverbial "elephant in the room" here is a 2018 Superior Court lawsuit filed by the San Francisco Federal Credit Union against the City (*SFFCU v. SFMTA*, case No. CGC-18-565325.) The lawsuit alleges bad faith and breach of contract by the City, while seeking damages which SFFCU claims as now exceeding $150 million. The credit union provided hundreds of millions of dollars in loans to medallion purchasers, many of whom are now in default, unable to make payments. The SFFCU suit argues in part that the city took inadequate action to prevent Uber and Lyft from destroying medallion value.

Jury trial is set for August 30, 2021. City Attorney, Dennis Herrera, has failed in four separate legal attempts to quash the lawsuit (Demurrer, Motion for Summary Judgment, *Writ of Mandamus,* Motion for Judgment on the Pleadings.)

The Agency in the past three years or so has engaged in various short-sighted policies designed to steer income away from pre-K and Prop. K MHs --- and towards "P" MHs --- in order to limit loan forfeitures and thereby reduce its own potential liability as defendant in the credit union litigation. For example, **"P" Medallion Holder taxis are the only ones currently allowed to pick up fares at SFO.** This myopic policy is materially unfair to the other MHs, many of whom can no longer rent out their taxis because lease drivers generally need access to airport pickups in order to be successful. By reducing overall taxi supply --- both at SFO and in the city --- the Agency has managed to marginally increase "P" MH income, but it comes at the expense of other MHs . By reducing taxi availability, the Agency's SFO pickup restrictions harm overall public service and very likely are negatively affecting tourism as well.

Many observers believe the TNC business model is not ultimately sustainable and that meaningful taxi medallion value will return at some point. By confiscating permits from disabled MHs including Mr. Horbal, the Agency --- rather than the deserving MHs who themselves were career drivers but are now disabled --- will

extract future medallion value by leasing or selling the permits. Hearing Officer Sebastian makes reference in both of his Horbal Decisions to the perceived likelihood that the outcome of the credit union lawsuit may change the landscape to allow for medallion transfers at market price, rather than the current $250,000 set price at which there is no sales activity. We ask that you disallow the Agency's attempt to confiscate Mr. Horbal's medallion.

Summary

The taxi medallion is a **business license,** although Agency interpretations render it mostly as a **work permit** requiring a MH to drive full-time until death. Such policy is Draconian, inhumane, and a major threat to public safety. **The applicant pledge in Prop. K was incorrectly codified in 1988 as a never-ending requirement to drive full-time**. Agency policy egregiously violates ADA. In the instant case, the Agency cites its own often arbitrary Tr. Code provisions to justify the Horbal revocation action, However, many of the Tr. code entries **directly violate and contravene superseding laws such as ADA and Prop. K.**

The *Slone* Agreement applies to Mr. Horbal. The Agency's former permit compliance manager correctly and compassionately advised that disabled MHs do not need an A-card --- or by extension, a CDL --- **to operate a taxi business license.** We believe the Agency's own financial self-interest is the actual motivation for its current wave of revocations on permits held by disabled Prop. K MHs. Mr. Horbal's case is virtually identical to the Agency's taxi permit revocations in 2003 which your prior Board Commissioners overruled on appeal.

Request

Please overrule the Agency's revocation of Mr. Horbal's permit**.** Thank you for your consideration and especially for your patience and diligence in wading through our lengthy, detailed brief.

George Horbal, (Appellant)

Carl Macmurdo (Agent)

EXH. 7

from: SF Chronicle
Wed, March 26, 2003

type still op... ...nia. It is lesser known than the ...'Doul bridge, which is a block away and as fam... other span their des... ceived, the Golden Gate Bridge.

Before making his name with

2 S.F. men hit by cab at Market Street ATM

By Jim Herron Zamora
CHRONICLE STAFF WRITER

Two San Francisco men were badly injured when a taxicab veered out of control on Market Street and pinned them both against an ATM, police said.

One victim, a 57-year-old man, lost both his legs after the Yellow Cab jumped the curb and slammed into him as he stood by the Bank of America ATM at 11th and Market streets Tuesday night. He remained in critical condition Wednesday.

The second man, who is 27, suffered a crushed pelvis and other injuries and was in fair condition at San Francisco General Hospital. Authorities would not release the victims' names.

Police said the cabdriver had crossed into oncoming traffic as he was driving west on Market around 10 p.m. and had run onto the sidewalk outside the bank.

Investigators said the driver was 73 years old and a veteran of Yellow Cab but did not give his name. Although they released him after interviewing him, they said he still could face charges.

The driver told police his brakes had failed. Officers said there was no evidence of brake problems and no skid marks. Witnesses told police the driver had not been speeding.

Yellow Cab Cooperative management did not return phone calls, and a company dispatcher declined to comment.

E-mail Jim Herron Zamora at jzamora@sfchronicle.com.

1978 Voter Pamphlet Summary

EXH. 10

K REGULATION OF TAXICABS

PROPOSITION K

Shall taxicab permits be issued only to individual cab operators and shall the private sale of rights in taxicab permits be prohibited?

Analysis

By Ballot Simplification Committee

THE WAY IT IS NOW: New taxicab permits are only issued when the Police Commission says they are needed. The fee to the city for a new permit is $7500. Permits may also be freely sold from one person or company to another for whatever price they agree upon. Today permits sell privately for over $10,000 apiece because over 700 permits are out and no new permits are being issued. If one party buys a taxicab permit from another party, a transfer fee of $1000 must be paid to the city.

THE PROPOSAL: Proposition "K" would change the way taxicab permits are issued and prevent them from being transferred from one party to another. The Police Commission would set the amount of permit fees and hold hearings on applications for permits. New permits would be required for all taxicabs, including those now being operated under the old permits. Present owners would have preference for new permits, but they would have to exchange their permits within 60 days. No permits could be bought or sold privately. They would belong to the City and County. Preference for completely new permits would go to anyone who has been a taxicab driver for one straight year within the past three years. Once present permit holders have exchanged their permits, new permits would only be issued to individuals, not to companies. The permit could be revoked if more than 10 percent of a taxi company's stock is sold or transferred. Owners would also be required to keep specific financial records.

A YES VOTE MEANS: If you vote yes, you do not want taxicab permits to be sold on the open market and you want to phase out ownership by companies.

A NO VOTE MEANS: If you vote no, you either want the taxicab permit rules to stay the way they are now, or you want to change them in some other way.

Controller's Statement on "K"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition K:

Should the proposed ballot proposition be adopted, in my opinion, there would be an increase in the cost of government. However, this increase in cost would be offset by the fees to be established by the Police Commission.

How Proposition K Got On The Ballot

Proposition K was placed on the ballot by a City Charter provision which allows four or more individual members of the Board of Supervisors to place an Ordinance or Declaration of Policy on the ballot.

On January 8th the Registrar received a request from 5 supervisors asking that the question of taxicab regulation be placed on the ballot. The request was signed by Supervisors Dianne Feinstein, Quentin Kopp, Ronald Pelosi, John Barbagelata and Al Nelder.

Propositions J and K are of the same general purpose. In the event that both measures are approved by the voters, the one receiving the highest affirmative vote will prevail and the other will fail of passage.

THE TEXT OF PROPOSITION K APPEARS ON PAGE 53

Passed by TC on 10-08-02

2nd EER Proposal

EXH. 9

CONTINUOUS DRIVING AS AN ESSENTIAL ELIGIBILITY REQUIREMENT OF THE CITY'S TAXI PERMITTING PROGRAM

[Proposed Resolution – October 8, 2002 Taxi Commission Meeting]

WHEREAS, the text of Proposition K indicates the importance that measure places on permitholders driving on a continuous basis, by

- requiring every applicant for a motor vehicle for hire permit to declare under penalty of perjury that he or she intends actively and personally to engage full-time as permittee-driver under any permit issued to him or her;
- defining full-time driving with considerable specificity; and
- requiring the Taxi Commission, in determining whether or not public convenience and necessity exist for the issuance of a permit, to find that the applicant will be a full-time driver; and

WHEREAS, This Commission has recognized that a basic principle central to Proposition K is that permitholders be full-time drivers rather than absentees, and the California Court of Appeal has likewise recognized that Proposition K embraces a strong policy favoring full-time, or continuous, driving by permitholders;

WHEREAS, Proposition K had as a main purpose to shift the City's taxi permitting process from a system that allowed corporations and nondrivers to hold permits, to a system in which only bona fide drivers would hold permits; and this central purpose will be compromised if nondrivers are allowed to hold permits, because in every such case, the nondriver would hold the permit at the expense of an actual driver who otherwise would be issued the permit;

WHEREAS, the requirement that permitholders drive on a continuous basis serves the public interest in a number of ways, including that

- it tends to promote stability in the driving work force, because if permits can be held by absentees, there will be fewer opportunities for nonpermitholding drivers to obtain permits, and thus less incentive for drivers to stay in the industry for lengthy periods of time;
- it tends to promote experience in the driving work force, because it ensures that for a significant part of the time a permitted vehicle is driven, the driver must be someone who drives frequently;
- it tends to promote a sense of equity among the driving work force, because it requires that persons doing the day-to-day work of driving receive the rewards of being a permitholder;
- it tends to promote greater cleanliness, comfort, and safety of vehicles, because the permitholder must drive the permitted vehicle frequently and thus has a personal incentive to ensure that the vehicle is clean, comfortable, and safe; and
- it provides an entrepreneurial opportunity and a degree of upward mobility for drivers; and

WHEREAS, Federal and state disability laws do not require the City to waive essential eligibility requirements of its taxi permitting programs, but do require the City to make reasonable accommodations to aid disabled permitholders in complying with essential eligibility requirements; and

WHEREAS, the California Court of Appeal has stated that the City, in defining continuous driving, need not strictly adhere to the specific quantitative formula in Proposition K for measuring full-time driving, but may make some limited allowance for disabled permitholders by employing an alternative definition, provided that the alternative definition complies with Proposition K's mandate that permitholders drive on a continuous basis; now, therefore,

BE IT RESOLVED, That continuous driving is an essential eligibility requirement of the City's programs for the permitting of motor vehicles for hire, and that exempting a permitholder from that requirement would fundamentally alter the nature of those programs; and

BE IT FURTHER RESOLVED, That this resolution is not intended to restrict the Commission's discretion in devising alternative definitions of continuous driving to accommodate disabled permitholders whose disability precludes them from complying with the specific quantitative formula in Proposition K for measuring full-time driving, provided that any alternative definition satisfies the continuous driving requirement mandated by Proposition K; and

BE IT FURTHER RESOLVED, That this resolution is not intended to restrict the Commission's discretion in determining what sanction or sanctions may be appropriate to impose on a disabled permitholder who does not meet Proposition K's continuous driving requirement.

Subject: Jim Emery email to Rudy Sebastian

---------- Forwarded message ---------
From: **Emery, Jim (CAT)** <Jim.Emery@sfcityatty.org>
Date: Tue, Jun 22, 2021, 10:57 AM
Subject: SFMTA v. Horbal (Medallion # 1303)
To: Sebastian, Rudy (MTA) <Rudy.Sebastian@sfmta.com>
Cc: georgehenrygh73@gmail.com <georgehenrygh73@gmail.com>, HearingsGeneral@sfmta.com <HearingsGeneral@sfmta.com>, Givner, Jon (CAT) <Jon.Givner@sfcityatty.org>, Cranna, Philip (MTA) <Philip.Cranna@sfmta.com>

Dear Mr. Sebastian,

I am advising the Taxi Division in the recently adjudicated medallion non-renewal cases. Below is the email I received on June 15 from your colleague Mr. Doyle, advising me that the SFMTA hearing officers "have come to accept the need to reconsider our decisions in each of these medallion [non-renewal] cases that have already been adjudicated. Those decisions on reconsideration will be forthcoming later this week or early next." Please confirm you will withdraw or reconsider your June 9 decision in Mr. Horbal's case before June 24, 2021, to avoid the need for the taxi division to file a protective appeal.

Thank you,

Jim Emery

Deputy City Attorney

Office of City Attorney Dennis Herrera

(415) 554-4628 Direct

www.sfcityattorney.org

From: Doyle, James <James.Doyle@sfmta.com>
Sent: Tuesday, June 15, 2021 5:32 PM
To: Emery, Jim (CAT) <Jim.Emery@sfcityatty.org>
Subject: Taxi Medallion Decisions

Hello Mr. Embry:

After some extensive discussion with our hearing officers, we have come to accept the need to reconsider our decisions in each of these medallion revocation cases that have already been adjudicated. Those decisions on reconsideration will be forthcoming later this week or early next. The SFMTA need not appeal. Thanks, James

James Doyle

Manager (Acting)

SFMTA Hearing Section

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,

vs.

GEORGE HORBAL,
Respondent

STATEMENT OF DECISION

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency ("SFMTA") after the Complaint was sent to respondent George Horbal on or about October 26, 2020. The SFMTA Complaint alleges that Mr. Horbal had not taken the necessary measures to renew his status as a qualified taxi medallion holder, and on that basis the SFMTA's Taxi Services had notified Mr. Horbal on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Horbal by this Hearing Section for April 27, 2021, under the provisions of Article 1100 of the SFMTA's Transportation Code. That Article governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On April 27, 2021, Mr. Horbal appeared via telephone at the time of this hearing, and the Taxi Services and its witness, analyst Danny Yeung, appeared by video, along with the undersigned administrative hearing officer, and at that time testimony from each of the parties was received into evidence.

II. THE COMPLAINT

In its Complaint the SFMTA's Taxi Services alleges that based upon "Post-K" provisions adopted by the Transportation Code ("TC"), taxi medallion holders are subject to a full-time driving requirement and must hold an active A-Card in order to retain their legal status as medallion holders. Additionally, the Transportation Code also requires that for an A-Card permit to be granted, a full-time driver must also have a valid California driver's license.

In terms of Mr. Horbal, the Complaint stated that because he no longer had a current California driver's license, he could not qualify for an A-Card, and as a result the renewal of medallion

~~#1303 could not be authorized under the relevant provisions of the Code.~~
#1303 could not be authorized under the ~~relevant~~ relevant provisions of the Code.

III. APPLICABLE LAW

Under the provisions of Article 1100 of the Transportation Code, the following statutory authority forms the relevant basis for this decision, including the Transportation Code's definitions of "A-Card," "Medallion Holder," "Notice of Nonrenewal," and "Permit Holder."

Also relevant to this case are these Article 1100 provisions:

- TC §1103(c)(2)(C), regarding driver qualifications
- TC §1103(c)(3), regarding the lapse of active permit status;
- TC §1105(a)(1), regarding permits required;
- TC §1105(a)(3), regarding permits as privilege, not property of the driver;
- TC §1105(a)(5)(A), regarding the duration of permits;
- TC §1105(a)(6), involving compliance with laws and regulations;
- TC §1109(a)(1), re required affiliation with Color Scheme;
- TC §1109(c)(1), regarding the full-time driving requirement;
- TC §1109(e)(1)(A), involving various aspects of medallion operation;
- TC §1116, covering surrender of medallions for consideration.

IV. TESTIMONY

A. SFMTA Testimony and Evidence Presented: Danny Yeung:

Danny Yeung, an administrative analyst in the SFMTA's Taxi Services, testified to the origin and reliability of the exhibits offered by Taxi Services at the hearing. The exhibits included a driver profile of Mr. Horbal (Exh. A), the Division's Notice of Nonrenewal (Exh. B), and the written statement of George Horbal dated October 19, 2020 (Exh. C). Mr. Yeung confirmed that the evidence of record established that Mr. Horbal had not had a current California driver's license for at least the previous two years, and that his A-Card had expired in approximately December of 2017 and had never been renewed since that time.

B. George Horbal:

Mr. Horbal testified that he is a resident in the state of California, and that he has not been physically capable of driving for a living due to his physical health currently wheelchair-bound due to renal failure (3 kidney operations) and cancer (an operation to remove a cancerous growth from his leg).

Mr. Horbal testified that he understands that his medallion (#1303) had been used by Yellow Cab Company, as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that allow this sort of operational transfer to a Color Scheme from the original medallion holder. He wants to retain his medallion as source of retirement income.

Mr. Horbal confirmed that he does not have a current California driver's License and that his A-Card has not been renewed since 2017. Essentially, Mr. Horbal acknowledges that the legal provisions that apply to taxi drivers in San Francisco apparently establish that due to his current status, his medallion will not be renewed, and understands that it may have already been confiscated.

In this respect Mr. Horbal does not seriously dispute the Taxi Division's testimony or evidence, or the features of the Transportation Code that appear to require medallion confiscation (i.e. "nonrenewal") under some circumstances. However, Mr. Horbal believes that Federal ADA law protects a medallion holder rights where a taxi driver can no longer drive due to a permanent disability, and that ADA law applies under his own circumstances to protect his right to retain his medallion.

Mr. Horbal stated that he satisfied the requirement of an intention to drive until his health conditions would not allow him to drive anymore. He believes that the medallion is a business license and separate from the A-card, which he describes as a work permit. He maintains that there should be a residual monetary value to medallion #1303, which could have been paid to him in exchange for the surrender of this permit, and that there should be current circumstances in San Francisco which would allow him to sell or transfer his medallion to a third party for a current market value, just as other drivers have done in the past as holders of their own medallions.

C. Carl Macmurdo

Mr. Macmurdo testified that he has been a taxi driver for over 30 years, that he is a Prop-K medallion holder, and is the president of the Medallion Holders Association. He testified that the medallion is equivalent to a business license and is separate from the A-card requirement and the requirement to drive full-time. He referred to Prop-K and Quentin Kopp's writing of the law, and specifically that the applicant for a taxi medallion had to swear only to *intend* to be a full-time driver. He argued that the taxi medallion holder's sworn intent to drive on a full-time basis was the only requirement, and that a driver's intent to drive has since been misconstrued by the SFMTA's interpretations of Article 1100 of the Transportation Code.

Because of the current health pandemic, Mr. Macmurdo stated that Mr. George Horbal does not need to have a current or active A-card in order to be a medallion holder, because the full-requirement driving requirement is currently suspended. On that basis Mr. Horbal's medallion should not be confiscated by the SFMTA.

D. Dennis Korkos

Mr. Korkos testified that he has been a taxi driver for four decades and has been a medallion holder for two decades. He echoed the statements of both George Horbal and Carl Macmurdo regarding their understanding of a driver's sworn intent to drive—as opposed to having an actual ability to drive on a full-time basis. He stated that one's sworn intent to drive does not mean that medallion holders are required to drive for one's entire life span. He equated the medallion to a

business license using the analogy of a bar [redacted] holding the license and having the ability to hire bartenders for part-time work. He questioned whether Mr. Horbal had been given proper advance notification by the SFMTA's Taxi Services.

The following documents offered by Respondent Horbal were admitted in the record:

- Memorandum, Thomas Owen to Mariann Costello, 4/25/2000
- *SF Taxi Permitholders, et al. v. City and County of San Francisco*, CA Court of Appeals, 1st District, Unpublished Decision, 7/11/2002
- Proposed Resolution, Taxi Commission, 10/08/2002
- SF Chronicle, Article regarding 11th & Market St Accident, 3/26/2003
- SFMTA Board Resolution No. 09-138 (Re *Slone v. Taxi Commission*), 9/9/2009
- *Sloane v. Taxi Commission*, U.S.C.A, 9th Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- Written statement to SFMTA Director Tumlin re elimination of TC § 1109(c), 5/7/2020
- Medallion Holders Assn. (MHA), Medallion Revocation Hearing Arguments, 6/7/2021
- 1978 Voter Pamphlet Summary of Proposition K (no date)
- Text of Proposition K Provisions (no date)
- Prop-A of 2007: Taxi Commission Authority Transfer to SFMTA (no date)
- SF Taxi Commission, Medallion Holders by Date of Birth (no date)

V. FINDINGS

1. Respondent Without California Driver's License and A-Card

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent George Horbal does not have a current California driver's license, and as a result no longer is eligible to possess a current A-Card as that driver's permit is defined by the SFMTA's Taxi Division.

By his own admission, Mr. Horbal can no longer drive a taxi or any vehicle. Because Mr. Horbal cannot drive, his A-Card cannot be renewed pursuant to the provisions of TC §§1103 and 1105, as noted above. Without a current California driver's license, an A-Card cannot be maintained, and without a current A-Card, a taxi driver's entitlement to a holding a taxi medallion here is or may be relinquished. That medallion relinquishment would be appropriate here under normal circumstances.

2. Circumstances of Transfer Moratorium Preclude Normal Renewal Policies

However, the present circumstances involving the interest associated with medallions in San Francisco are not normal. At the present time, and at least since 2016, there has been no market for medallions in San Francisco, largely due to the influx of TNC operations and the litigation between the San Francisco Federal Credit Union and the San Francisco Municipal Transportation Agency. That litigation has resulted in a moratorium in the sale and transfer of taxi medallions due to the fixed and established price of medallion surrender as set forth in TC §1116(b)—which

Significantly exceeds the current market price of a local taxi medallion. As long as the litigation continues, the medallion surrender price remains at $200,000, based upon the price of a medallion to a new transferee of $250,000.

At the present time, there is no indication that the surrender and transferring of medallions will dramatically change in the near future. While the SFMTA Board of Directors may change the surrender price of medallions and may even decide at any time to end the surrender program under the provisions of TC §1116(a)(5), that has not happened. And it is possible that the MTAB may continue to preserve a medallion holder's right to surrender their medallion for consideration.

Until such time as the surrender program is ended, TC §1116(a)(1)(A) provides "eligibility" for the surrender of their medallions to any drivers with disabilities that prevents the full-time driving requirement for Post-K medallion holders, as mandated by TC §1116(c)(1).

Respondent George Horbal, who is 74, and by his own admission unable to drive a taxi, continues to be an eligible candidate under the current provisions of TC §1116 to surrender his medallion for monetary consideration. That there is no current market for medallion transfer in San Francisco is a condition artificially influenced by the aforementioned litigation, and under most scenarios the resulting transfer moratorium is not expected to continue indefinitely.

Once the underlying reason for the moratorium is resolved by the parties to the litigation, it is the belief of the undersigned that a market for the transfer of taxi medallions will be restored. In light of the affect upon the taxi industry by the operation of the TNC operations, it is nearly certain that the market value of medallions will never approach the transferee price of $250,000, which was established in 2010. When the current litigations is finally concluded, some lesser value will be established based upon a then-current market-based valuation for medallions, and those medallion holders who still have their medallions at that time will be in line to receive some consideration for their surrendered medallions—as least under current provisions of the Transportation Code.

3. Comparative Risks and Liabilities Strongly Favor Respondent

As against this future expectation interest in the surrender of his medallion, the SFMTA has an interest in reclaiming medallions that are no longer being actively used. There seems, however, little urgency in reclaiming this particular medallion at this particular time. The Agency can re-file its Notice of Nonrenewal at any time and given the current scheduled trial date for the Credit Union/Agency litigation, some normalization of the medallion transfer program could occur by the end of this year. Based upon the intention of the SFMTA's Taxi Services, as I have understood them, medallion transfers will certainly continue to occur in San Francisco—meaning that some residual market rates for those transfers will emerge.

The virtual moratorium on medallion transfers arose after the SFMTA's decision to charge a quarter of a million dollars for each medallion transfer, and the appearance of the TNC operations which considerably reduced the earnings of taxi drivers across the board. This loss of income directly lead to the loan foreclosures by the SF Federal Credit Union, which resulted in

the current Credit Union SFMTA litigation. If any ~~one~~ party should be affected by the Agency's decision to sell its medallions, it should be the SFMTA itself, and certainly not the taxi drivers themselves who have been caught in the middle.

4. SFMTA Hearing Section Policy

It is the policy of this Hearing Section to tread conservatively in consideration of the inadequately defined surrender rights of our elderly taxi drivers. Post-K drivers had to work for years in the taxi industry before being entitled to medallions, and they have labored under the reasonable expectation that their medallions would eventually provide some monetary benefit to them at time of transfer.

On the basis of all of these considerations, I find that the SFMTA has not established, by a preponderance of the evidence, that Mr. Horbal's medallion (#1303) is in a posture *at the present time* to be revoked by the operation of the various permit renewal provisions of the Transportation Code, as noted above.

Should circumstances change such that the medallion program is ended at some point, and/or if and when the monetary consideration for medallions remains at zero, SFMTA's Taxi Services can certainly refile a Notice of Nonrenewal at that time, and the current impediments against the justification for these Notices will no longer be in effect.

5. Date of Decision

As noted above this case was heard on April 27, 2021, and ordinarily under TC §1120(e)(1) a decision would be due 30 days after the date of the hearing. However, additional evidence was submitted following the April 27 hearing, specifically the May 12, 2021 brief from Taxi Services that involves case common issues relevant to the Horbal case. On that basis this decision is due to be filed and published on or before June 12, 2021.

VI. ORDER

By reason of the Findings stated above, the Taxi Service's Notice of Nonrenewal in this matter is denied, and medallion #1303 may not now be revoked.

Dated this 10th day of June 2021

RJ Sebastian

Rudy J. Sebastian
Neutral Hearing Officer
Supervisor
SFMTA Hearing Section

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SFMTA HEARING SECTION

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,	
vs.	**DECISION ON RECONSIDERATION**
GEORGE HORBAL, Respondent	

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency ("SFMTA") after the Complaint was sent to respondent George Horbal on or about October 26, 2020. The SFMTA Complaint alleges that Mr. Horbal had not taken the necessary measures to renew his status as a qualified taxi medallion holder, and on that basis the SFMTA's Taxi Services had notified Mr. Horbal on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Horbal by this Hearing Section for April 27, 2021, under the provisions of Article 1100 of the SFMTA's Transportation Code. That Article governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On April 27, 2021, Mr. Horbal appeared via telephone at the time of this hearing, and the Taxi Services manager, Philip Cranna, and its witness, analyst Danny Yeung, appeared by video, along with the undersigned administrative hearing officer, and at that time testimony from each of the parties was received into evidence.

II. THE COMPLAINT

In its Complaint the SFMTA's Taxi Services alleges that based upon "Post-K" provisions adopted by the Transportation Code ("TC"), taxi medallion holders are subject to a full-time driving requirement and must hold an active A-Card in order to retain their legal status as medallion holders. Additionally, the Transportation Code also requires that for an A-Card permit to be granted, a full-time driver must also have a valid California driver's license.

In terms of Mr. Horbal, the Complaint stated that because he no longer had a current California driver's license, he could not qualify for an A-Card, and as a result the renewal of medallion #1303 could not be authorized under the relevant provisions of the Code.

III. APPLICABLE LAW

Under the provisions of Article 1100 of the Transportation Code, the following statutory authority forms the relevant basis for this decision, including the Transportation Code's definitions of "A-Card," "Medallion Holder," "Notice of Nonrenewal," and "Permit Holder."

Also relevant to this case are these Article 1100 provisions:

- TC §1103(c)(2)(C), regarding driver qualifications
- TC §1103(c)(3), regarding the lapse of active permit status;
- TC §1105(a)(1), regarding permits required;
- TC §1105(a)(3), regarding permits as privilege, not property of the driver;
- TC §1105(a)(5)(A), regarding the duration of permits;
- TC §1105(a)(6), involving compliance with laws and regulations;
- TC §1109(a)(1), re required affiliation with Color Scheme;
- TC §1109(c)(1), regarding the full-time driving requirement;
- TC §1109(e)(1)(A), involving various aspects of medallion operation;
- TC §1116, covering surrender of medallions for consideration.

IV. TESTIMONY

A. SFMTA Testimony and Evidence Presented: Danny Yeung:

Danny Yeung, an administrative analyst in the SFMTA's Taxi Services, testified to the origin and reliability of the exhibits offered by Taxi Services at the hearing. The exhibits included a driver profile of Mr. Horbal (Exh. A), the Division's Notice of Nonrenewal (Exh. B), and the written statement of George Horbal dated October 19, 2020 (Exh. C). Mr. Yeung confirmed that the evidence of record established that Mr. Horbal had not had a current California driver's license for at least the previous two years, and that his A-Card had expired in approximately December of 2017, and had never been renewed since that time.

B. George Horbal:

Mr. Horbal testified that he is a resident in the state of California, and that he has not been physically capable of driving for a living due to his physical health currently wheelchair-bound due to renal failure and a cancerous condition involving one of his legs.

Mr. Horbal testified that he understands that his medallion (#1303) had been used by Yellow Cab Company, as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that allow this sort of operational transfer to a Color

Scheme from the original medallion holder. He wants to retain his medallion as source of retirement income.

Mr. Horbal confirmed that he currently does not have a California driver's license and that his A-Card has not been renewed since 2017. Essentially, Mr. Horbal acknowledges that the legal provisions that apply to taxi drivers in San Francisco apparently establish that due to his current status, his medallion may not be renewed, and he understands that it may have already been confiscated.

In this respect Mr. Horbal does not seriously dispute the Taxi Division's testimony or evidence, or the features of the Transportation Code that appear to require medallion confiscation (i.e. "nonrenewal") under some circumstances. However, Mr. Horbal believes that Federal ADA law protects a medallion holder's rights where a taxi driver can no longer drive due to a permanent disability, and that ADA law applies under his own circumstances to protect his right to retain his medallion.

Mr. Horbal stated that he satisfied the requirement of an *intention* to drive until his health conditions would not allow him to drive anymore. He believes that the medallion is a business license and is separate from the A-card, which he describes as a work permit. He maintains that there should be a residual monetary value to medallion #1303, which could have been paid to him in exchange for the surrender of this permit, and that there should be current circumstances in San Francisco which would allow him to sell or transfer his medallion to a third party for a current market value, just as other drivers have done in the past as holders of their own medallions.

C. Carl Macmurdo

Mr. Macmurdo testified that he has been a taxi driver for over 30 years, that he is a Prop-K medallion holder, and is the president of the Medallion Holders Association. He testified that the medallion is equivalent to a business license, and is separate from the A-card requirement and the requirement to drive full-time. He referred to Prop-K and Quentin Kopp's writing of the law, and specifically that the applicant for a taxi medallion had to swear only to *intend* to be a full-time driver. He argued that the taxi medallion holder's sworn intent to drive on a full-time basis was the only requirement, and that a driver's intent to drive has since been misconstrued by the SFMTA's interpretations of Article 1100 of the Transportation Code.

Because of the current health pandemic, Mr. Macmurdo stated that Mr. George Horbal does not need to have a current or active A-card in order to be a medallion holder, because the full-requirement driving requirement is currently suspended. On that basis he testified that Mr. Horbal's medallion should not be confiscated by the SFMTA.

D. Dennis Korkos

Mr. Korkos testified that he has been a taxi driver for four decades, and has been a medallion holder for two decades. He echoed the statements of both George Horbal and Carl Macmurdo regarding their understanding of a driver's sworn *intent* to drive—as opposed to having an actual ability to drive on a full-time basis. He stated that one's sworn intent to drive does not mean that medallion holders are required to drive for one's entire life span. He equated the medallion to a business license, using the analogy of a bar owner holding the license and having the ability to hire bartenders for part-time work. He questioned whether Mr. Horbal had been given proper advance notification by the SFMTA's Taxi Services concerning its effort to revoke his medallion

The following documents offered by Respondent Horbal were admitted in the record:

- Memorandum, Thomas Owen to Mariann Costello, 4/25/2000
- *SF Taxi Permitholders, et al. v. City and County of San Francisco*, CA Court of Appeals, 1st District, Unpublished Decision, 7/11/2002
- Proposed Resolution, Taxi Commission, 10/08/2002
- SF Chronicle, Article regarding 11th & Market St Accident, 3/26/2003
- SFMTA Board Resolution No. 09-138 (Re *Slone v. Taxi Commission*), 9/9/2009
- *Sloane v. Taxi Commission*, U.S.C.A, 9th Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- Written statement to SFMTA Director Tumlin re elimination of TC § 1109(c), 5/7/2020
- Medallion Holders Assn. (MHA), Medallion Revocation Hearing Arguments, 6/7/2021
- 1978 Voter Pamphlet Summary of Proposition K (no date)
- Text of Proposition K Provisions (no date)
- Prop-A of 2007: Taxi Commission Authority Transfer to SFMTA (no date)
- SF Taxi Commission, Medallion Holders by Date of Birth (no date)

V. PROCEDURAL HISTORY

On June 9, 2021, the undersigned denied Taxi Service's Notice of Nonrenewal as to Mr. Horbal's medallion. The decision was based upon certain equitable considerations (as noted below), which relied upon the medallion surrender provisions of TC §1116, which were found to be unfairly sidelined by the apparently overriding requirements of the Transportation Code for Post-K medallion holders to renew and maintain current A-Cards.

On June 22, 2021, Deputy City Attorney James Emery sent correspondence to the undersigned requesting reconsideration of the Statement of Decision in the Horbal case. On the basis of arguments presented at that time, on June 22, 2021, the undersigned filed a Notice of Withdrawal of Decision, which was sent to the parties.

On that same date, correspondence was sent to George Horbal, advising that our office had received a request for reconsideration. Mr. Horbal was further advised at that time that he would be given until July 1, 2021, to respond or otherwise comment upon the City Attorney's request. On June 27, 2021, Mr. Horbal advised the parties that he intends to appeal this decision and his case to the San Francisco Board of Appeals.

VI. FINDINGS

1. Respondent Without California Driver's License and A-Card

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent George Horbal does not have a current California driver's license, and as a result no longer is eligible to possess a current A-Card as that driver's permit is defined by the SFMTA's Taxi Division.

By his own admission, Mr. Horbal can no longer drive a taxi or any vehicle on a regular basis. Because Mr. Horbal cannot drive, his A-Card cannot be renewed pursuant to the provisions of TC §§1103 and 1105, as noted above. Without a current California driver's license, an A-Card cannot be maintained, and without a current A-Card, a taxi driver's entitlement to a holding a taxi medallion here is or may be relinquished. On that basis the nonrenewal of Mr. Horbal's medallion is now appropriate under the circumstances.

VII. EQUITABLE CIRCUMSTANCES RELATING TO DECISION

While current conditions nullify any monetary transfer value of any held medallions in the City, that situation may change in 2021, and it remains possible for the orderly transfer of taxi medallions to resume here. If medallion transfers resume, it may be possible for some medallion holders to enjoy a surrender value of their medallions when the moratorium on transfers no longer obtains.

Currently, and at least since 2016, there has been no market for medallions in San Francisco, largely due to the influx of TNC operations, and due to the litigation between the San Francisco Federal Credit Union and SFMTA. That litigation has resulted in a moratorium in the sale and transfer of taxi medallions based upon an established fixed price of medallion surrender as set forth in TC §1116(b)—which greatly exceeds the current market priceof a local taxi medallion. As long as the litigation continues, the medallion surrender price remains at $200,000, based upon the price of a medallion to a new transferee of $250,000. At this fixed price, medallion transfers are not expected to recur here until such time as conditions dramatically change following the conclusion of the current litigation.

Until the medallion surrender program is ended or otherwise amended by the Board of Directors, the existing provisions of TC §1116(a)(1)(A) provide an ongoing "eligibility" for the surrender of their medallions to any drivers with disabilities that prevent the full-time driving requirement for both "Pre-K" and "Post-K" medallion holders, as mandated by TC §1116(c)(1). TC section 1116 also extends this ongoing eligibility to drivers who have turned 60—although it is apparent that this age eligibility section of the Transportation Code does not extend to "Pre-K" medallion holders.

On the basis of this uncertainty in expectations on the part of medallion holders for some eventual surrender value in their medallions, our Hearing Section officers would have preferred to continue these cases, or to otherwise defer their decisions until the SFMTA Board might have had the opportunity to definitively decide the issues of medallion surrender—or until the current litigation between the Federal Credit Union and the SFMTA is resolved, which would presumably allow medallion transfers to resume.

But inasmuch as our Hearing Section does not have the inherent authority to ignore the express renewal provisions of Article 1100 the Transportation Code, or to postpone these hearings, and because there is no current transfer value in any taxi medallion in this jurisdiction (and none on the near horizon), our hearing officers will continue to decide these nonrenewal cases on a case-by-case basis but, in general, may have no recourse other than to follow the existing Transportation Code provisions in cases involving Notices of Nonrenewal, regardless of the equitable considerations that have been outlined here.

VIII. ORDER

By reason of the Findings stated above, the Taxi Services Notice of Nonrenewal is upheld, and medallion # 1303 is hereby revoked by operation of the provisions of the Transportation Code.

Dated this 9th day of July 2021

RJ Sebastian

Rudy J. Sebastian
Neutral Hearing Officer
Supervisor
SFMTA Hearing Section

RIGHT OF REVIEW

Under the provisions of the San Francisco Transportation Code, a decision of a hearing officer is a final administrative decision. Any party or entity adversely affected by this decision may seek review of the decision by filing an Appeal in accordance with the provisions and the 15-day timeline set forth in the rules provided by the San Francisco Board of Appeals.

BEFORE THE BOARD OF APPEALS

CITY AND COUNTY OF SAN FRANCISCO

PRESIDENT Y. K. ARNOLD CHIN, PRESIDING

---o0o---

QUERIDA MIA RIVERA,

APPELLANT

VS. APPEAL NO. 3-025

THE TAXI COMMISSION,

RESPONDENT.

_____/

WEDNESDAY, JUNE 11, 2003

ADDENDUM ITEM 4

Reported by: Claudine Woeber,

CSR #4094 (California)

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A P P E A R A N C E S

PRESIDENT ARNOLD Y. K. CHIN

VICE PRESIDENT KATHLEEN HARRINGTON

COMMISSIONER SABRINA N. SAUNDERS

COMMISSIONER DOUGLAS SHOEMAKER

COMMISSIONER HISASHI B. SUGAYA

CITY ATTORNEY THOMAS J. OWEN, ESQ. (Recused on Item 4)
CITY ATTORNEY PAUL JESSON, ESQ.

---o0o---

FOR APPELLANT:
ROBERT MOORE, ESQ.

FOR THE TAXI COMMISSION:
NAOMI LITTLE, EXECUTIVE DIRECTOR

PUBLIC SPEAKERS:

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VICE PRESIDENT HARRINGTON: I'll go next. I have to say that this is a case that pulls my heartstrings, because I think it's one where equity sometimes is more important than law, and as Samuel Johnson said "sometimes law is an ass."

And I certainly believe in this particular circumstance that Ms. Rivera deserves to get some special consideration. Let's kind of put everything in perspective. Prop K was passed in 1978. ADA was passed in 1991. A Federal law that has really overturned and taken precedence over all kinds of state and local laws because there was a decision at the Federal level that people with disabilities deserved certain accommodation.

It has been acknowledged that the efforts at accommodating people with permanent disabilities is still on the desk of our very able executive director of the Taxi Commission who has only been on the job a couple of years.

Nobody is disputing that there were, you know, waybills falsified, etc. But the point is, is it equitable to punish Ms. Rivera? Can she wait until the Taxi Commission figures out what to do with people with permanent disabilities? I think not. So I think the equity in this particular case requires that we allow

her to keep her Medallion.

My other comment is that like many other permit holders, Ms. Rivera relied on a system that was flawed, perhaps. Probably there's no disagreement there. But for nearly twenty years, this is the kind of system that was in existence. The fact that the system has now changed and is being perfected, and perhaps, will improve in the future, is a whole different issue.

But to go back in time and penalize somebody like Ms. Rivera, it's not something that I can do. I can't do it. So I'm going to vote to override the Taxi Commission and uphold Ms. Rivera's permit. Because I think equity requires it, I think ADA requires it, I think detrimental reliance on how the City operated requires it. So those are my views. Thank you.

MR. FELDMAN: Shall I call the role?

PRESIDENT CHIN: I'd like to ask for a friendly amendment. I think what we have is, we have an admission and a stipulation by all parties and also members of the public that there was some conduct that went on with regard to those waybills, and I would like to see if you could go along with overturning the Commission but impose at least a two-month suspension.

VICE PRESIDENT CHIN: If that's what it takes to get your vote, President Chin, I will go along with that friendly amendment.

MR. FELDMAN: So it will over overruling and changing the revocation into --

PRESIDENT CHIN: -- suspension for two months.

MR. FELDMAN: -- two-month suspension. Okay. We have a motion then from Vice President Harrington to overrule and change the revocation to a two-month suspension.

On that motion, President Chin?

PRESIDENT CHIN: Aye.

MR. FELDMAN: Commissioner Shoemaker?

COMMISSIONER SHOEMAKER: Aye.

MR. FELDMAN: Commissioner Sugaya?

COMMISSIONER SUGAYA: I'm going to vote "aye," but I think it sends the wrong message to people who

are out there violating the law.

MR. FELDMAN: Commissioner Saunders?

COMMISSIONER SAUNDERS: Aye.

MR. FELDMAN: "Aye." So it's five to zero to overrule and change the revocation to a two-month suspension. Thank you.

Ms. Little is going now to the budget meeting, and Sergeant Simpson is here for her.

(Whereupon, this hearing was concluded.)

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SAN FRANCISCO TAXI COMMISSION
MEDALLION HOLDERS
by DATE OF BIRTH

Medallion #	Color Scheme	Granted Date	Last Name	First Name	K	Birth Year
722	National	86/08/21	Ong	Sum	K	16
269	Luxor	84/08/02	Moy	William	K	19
662	Luxor	89/05/10	Kelly	John W.	K	20
744	Town	84/05/10	Tong	George	K	20
750	Yellow	84/05/10	Prenovitz	Simon	K	20
753	Royal	84/05/10	Wootton (Deceased 10/28/02)	Joseph	K	20
52	National	81/10/21	Rivera	Querida	K	23
200	United	97/05/01	Lorinez	Michael	K	23
167	United	95/08/09	Palat	Illan	K	24
243	National	91/01/09	Lym	Neil	K	24
1105	Town	99/02/10	Loo	Taft	K	24
585	Luxor	03/04/08	Tognotti	Frank	K	25
718	Veterans	84/05/10	DeCausemaker	Richard	K	25
721	Yellow	84/06/14	Correll	William J.	K	25
728	National	84/05/10	Kelley	J. Howard	K	25
786	Regents	88/02/23	Whipple	George	K	25
805	Yellow	88/02/18	Stockfleth	Walter	K	25
832	Bay	94/12/21	Wong	Guey Mon	K	25
491	Yellow	89/01/04	Ramsey	Willie	K	26
232	Luxor	81/12/16	Quigley	Richard	K	27
794	Luxor	88/02/23	Hom	Ying	K	27
231	Yellow	92/08/19	Gee	Kwing Hung	K	28
320	Yellow	82/10/27	Cardona	Miguel	K	28
336	National	89/03/09	Angeli	Clement V.	K	28
435	Luxor	96/03/16	Brunt	Warren H.	K	28
798	Bay	88/03/03	Wong	Winston	K	28
914	United	97/02/26	McClure	Gerald G.	K	28
199	Luxor	93/03/03	DeLiege	Rene C.	K	29
206	SF Taxi	81/10/28	Trad	George	K	29
352	American	84/01/11	Bartholomew	John	K	29
376	Yellow	90/01/17	Matheson	James A.	K	29
537	DeSoto	92/12/02	Johnson	William S.	K	29
1035	Luxor	98/12/16	Bingham	Lucius Tom	K	29
1095	Bay	99/01/06	Le	Tri Quang	K	29
195	Arrow	93/02/04	Crittendon	Vernell M.	K	30
198	Veterans	93/01/13	Williams	Ralph	K	30
329	Town	81/12/16	Woon	Victor	K	30
736	Yellow	84/05/10	Mar	Henry Kwong Poy	K	30
741	Town	84/05/10	Shair-Ali	Romeo	K	30
764	Regents	88/02/18	Anton	Bruie Hernandez	K	30
826	Metro	94/11/10	Low	Al	K	30
842	National	95/01/11	Jung	Edmund L.	K	30
1183	Royal	99/01/06	Ruggeiro	John	K	30
84	Luxor	92/01/22	Heywood, Jr.	Newell W.	K	31
355	Yellow	95/06/21	Broussard	Wilson	K	31
1073	DeSoto	98/12/16	Ward	Phillip	K	31
149	Regents	96/12/11	Ruiz	Joaquin	K	32
208	Luxor	81/10/28	Maldonado	John J.	K	32
219	Luxor	91/04/24	Palter	Noel	K	32
381	DeSoto	92/06/10	Davis	Curtis C.	K	32
762	Big Dog	87/12/03	McGee	Marguerite	K	32
781	Luxor	88/02/23	Craig	Robert	K	32
795	Yellow	88/02/23	Dorestant	Rene	K	32
800	National	88/02/23	Lee	Authur	K	32

NEW MUNICIPAL POLICE CODE SECTION, EFFECTIVE ON MARCH 1, 1989

Amendment of the Whole 12/5/88
As amended in Board 12/12/88

FILE NO. 15-88-2

ORDINANCE NO. 562-88

[Regulations for Motor Vehicles for Hire]

AMENDING PART II, CHAPTER VIII OF THE SAN FRANCISCO MUNICIPAL GODE (POLICE CODE), BY REPEALING ARTICLE 16 OF SAID CHAPTER (REGULATIONS FOR MOTOR VEHICLES FOR HIRE) AND ENACTING A NEW ARTICLE 16; AND AMENDING ARTICLE 1, SECTIONS 51.1 AND 53 OF SAID CHAPTER TO CONFORM CROSS-REFERENCES THEREIN; THIS ORDINANCE TO TAKE EFFECT ON MARCH 1, 1989.

Be it ordained by the people of the City and County of San Francisco:

Section 1. Chapter VIII, Part II, Article 16, of the San Francisco Municipal Code (Police Code) ("Regulations for Motor Vehicles for Hire") is hereby repealed.

Section 2. Chapter VIII, Part II, of the San Francisco Municipal Code (Police Code) is hereby amended by adding a new Article 16 ("Regulations for Motor Vehicles for Hire") thereto, reading as follows:

ARTICLE 16

REGULATIONS FOR MOTOR VEHICLES FOR HIRE

DIVISION 1 - PROVISIONS GOVERNING ALL VEHICLES

SEC. 1075. DECLARATION OF POLICY. The Board of Supervisors of the City and County of San Francisco hereby declare it shall be the policy of the City and County of San Francisco that:

(a) All motor vehicle for hire permits issued by the City and County of San Francisco are the property of the people of the City

/ / /

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SEC. 1090. REVOCATION OF PERMITS. (a) **Revocation for Cause.** Any permit issued under this Article may be suspended or revoked by the Police Commission for good cause after a noticed hearing. "Good cause" hereunder shall include, but shall not be limited to, the following:

(i) The permittee ceased to be a full-time driver.

(ii) The permittee failed to pay a permit fee after notice of nonpayment.

(iii) The permittee or the lessee of the permittee's permit operated without the insurance required by this Article.

(iv) The permittee or an agent of the permittee knowingly made false statements to or concealed information from the Police Commission, the Chief of Police or the Police Department.

(v) The permittee has been convicted of any crime involving moral turpitude.

(vi) The permittee has failed to satisfy any judgment for damages arising from unlawful or negligent operation under any permit issued under this Article.

(vii) The permittee has been convicted of a misdemeanor under Section 1185 of this Article.

(viii) The permittee violated the Traffic Code of the City and County of San Francisco or the Vehicle Code or related laws of the State of California.

(ix) The permittee violated any applicable statute, ordinance, rule or regulation pertaining to the operation or licensing of the vehicles and services regulated by this Article, including any rules and regulations enacted by the Chief of Police pursuant to this Article.

Upon a showing of good cause, the Police Commission shall have discretion to suspend or revoke a permit as set forth above, except that a suspension and/or revocation shall be mandatory in the circumstances described in Subparts (i) through (vi) above.

(b) **Revocation of More Than One Permit.** Where a person violating this Article holds more than one permit to operate a motor vehicle for hire in the City and County of San Francisco, the Police Commission may revoke or suspend all such permits.

(c) **Suspension by Chief of Police.** The Chief of Police may suspend summarily any permit issued under this Article pending a disciplinary hearing before the Police Commission when in the opinion of said Chief of Police the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter. (Added by Ord. 562-88, App. 12/27/88)

CITY AND COUNTY OF SAN FRANCISCO

LOUISE H. RENNE
City Attorney

OFFICE OF THE CITY ATTORNEY

THOMAS J. OWEN
Deputy City Attorney

DIRECT DIAL: (415) 554-4652
E-MAIL: thomas_owen@ci.sf.ca.us

Doc #8

page 1 of four

MEMORANDUM

TO: Hon. Mariann Costello
President, Taxi Commission

FROM: Thomas J. Owen
Deputy City Attorney

DATE: April 25, 2000

RE: Advice Request

You have asked this office to respond to a series of questions submitted by industry members. Here are our answers to some of those questions; our responses to the remaining questions will follow:

"2. **Disability and other kinds of leave for permit holders.**

"a. Without amending Prop. K, could the city by modification of the Municipal Code allow a disabled permit holder exemption from the driving requirement for an extended period of time? If the permit holder was permanently disabled, could the exemption also be permanent?

"b. Without amending Prop. K, could the city by ordinance allow for a suspension of the permit for reasons of disability, or for any other reason (or no reason at all?)

"c. Should the Municipal Code be amended to reflect the requirements of the Americans with Disabilities Act (ADA)? If so, how should it be amended?"

Proposition K requires that a permit-holder "actively and personally . . . engage as permittee-driver under any permit issued to him or her for at least four hours during any 24 hour period on at least 75 percent of the business days during the calendar year." (Proposition K, § 2(b).) This provision is commonly referred to as the "full-time

driving" requirement. Because Proposition K was adopted by the voters, it may only be amended by the voters. (Charter § 14.101.) Therefore, the Board of Supervisors may not amend the Municipal Code to allow permit-holders a temporary or long-term exemption from or suspension of the driving requirement, for reasons of disability or any other reason.

The City does have the separate and independent obligation to comply with the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and any other superseding state or federal statute. Compliance may mean disregarding or not enforcing all or part of a voter-approved initiative ordinance.

The City, acting here through its Taxi Commission, is responsible for ensuring that qualified individuals with disabilities are not "excluded from participation in or . . . denied the benefits of the services, programs, or activities" provided or offered by the City. (42 U.S.C. § 12132.) The Commission should consider whether reasonable modifications of its rules, policies or practices would allow otherwise qualified individuals with disabilities to meet the "essential eligibility requirements" for participation in the program, if those modifications did not fundamentally alter the nature of those requirements or of the program. (42 U.S.C. § 12131.)

We emphasize that no determination has been made at this point that the enforcement of the driving requirement for permit-holders conflicts with the ADA. The Commission may decide that being a full-time driver is an essential eligibility requirement for permit-holders under Proposition K and that full or partial waiver of the requirement would fundamentally alter the program. Those determinations will have to be made as the Taxi Commission develops its ADA policies and identifies what modifications of the driving requirement, if any, would be a reasonable accommodation for particular disabled individuals.

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Subject: RE: requested info re: historical medallion issuance
From: "Standfield, Paige" <Paige.Standfield@sfmta.com>
Date: 03/27/2017 11:36 AM
To: Charles Rathbone <charles.rathbone@sonic.net>
X-Account-Key: account19
X-UIDL: 1490640127.2650_0.a.spam,S=11698
X-Mozilla-Status: 0013
X-Mozilla-Status2: 00000000
X-Mozilla-Keys: sfmta medallions
Return-Path: <Paige.Standfield@sfmta.com>
Received: from l.mx.sonic.net (a.spam-proxy.sonic.net [69.12.221.245]) by
(8.14.4/8.14.4) with ESMTP id v2RIg6UR002644 (version=TLSv1/SSLv3 ci
GCM-SHA256 bits=128 verify=NOT) for <charles.rathbone@lds.sonic.net>;
-0700
Received: from 5pmail.ess.barracuda.com (5pmail.ess.barracuda.com [64.
l.mx.sonic.net (8.14.9/8.14.9) with ESMTP id v2RIftdB012009 (version=TLS
RSA-AES128-GCM-SHA256 bits=128 verify=NOT) for <charles.rathbone@
11:42:04 -0700
Received: from mail.sfmta.com (mail.sfmta.com [75.10.230.1]) by mx1403.
(version=TLSv1 cipher=AES128-SHA bits=128 verify=NO); Mon, 27 Mar 2(
Received: from SV6EX10MBX1.muni.sfgov.org ([fe80::79a1:35c7:bc:df7]) l
SV6EX10CASHUB1.muni.sfgov.org ([::1]) with mapi id 14.03.0195.001; Mo
Thread-Topic: requested info re: historical medallion issuance
Thread-Index: AQHSo0a8J5yxbJULJEOi3tis16IfvaGjAqmwgAHtdYD//5PZ
//pFsg
Message-ID: <D7D44E971C6E12468BF084AC6488B620E3C85E10@SV6
References: <E3AA1FD17871461B98EA4D1453D2E5AF@DESKTOP0PC
<D7D44E971C6E12468BF084AC6488B620E3C8590F@SV6EX10MBX1.n
<e1d41532-4754-5120-40c4-cbd901418562@sonic.net>
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<D7D44E971C6E12468BF084AC6488B620E3C85C66@SV6EX10MBX1.r
b34a-8cbf-502f-fa61958fb41b@sonic.net>
In-Reply-To: <f2378d6c-b34a-8cbf-502f-fa61958fb41b@sonic.net>
Accept-Language: en-US
Content-Language: en-US
x-originating-ip: [10.36.31.109]

Content-Type: multipart/alternative;
boundary="_000_D7D44E971C6E12468BF084AC6488B620E3C85E10SV(
MIME-Version: 1.0
X-BESS-ID: 1490639924-321459-18038-561-15
X-BESS-VER: 2017.3-r1703091851
X-BESS-Apparent-Source-IP: 75.10.230.1
X-BESS-Outbound-Spam-Score: 0.00
X-BESS-Outbound-Spam-Report: Code version 3.2, rules version 3.2.2.1
pts rule name description ---- ---------- ---------- 0.0(
HTML included in message 0.00 BSF_BESS_OUTBOUND META: BESS O
X-BESS-Outbound-Spam-Status: SCORE=0.00 using account:ESS3178
tests=HTML_MESSAGE, BSF_BESS_OUTBOUND
X-BESS-BRTS-Status: 1
X-Orthrus: tar=1 grey=no co=US os=//6 spf=none dkim=none

Hi Charles,

No, if you're not driving you don't have to renew. Would you like me to put a new form in the mail to you?

From: Charles Rathbone [mailto:charles.rathbone@sonic.net]
Sent: Monday, March 27, 2017 10:04 AM
To: Standfield, Paige <Paige.Standfield@sfmta.com>
Subject: Re: requested info re: historical medallion issuance

Yes, the info is very helpful.

An unrelated question: I anticipate that my doctor will again recommend that I not drive when my current medical modification expires this summer. In the meantime, do I need to maintain an active A-card as a condition of holding a taxicab permit?

Best wishes,
--
Charles Rathbone
charles.rathbone@sonic.net

On 03/27/2017 08:51 AM, Standfield, Paige wrote:

> No problem. Hope it helps!
>
> -----Original Message-----
> From: Charles Rathbone [mailto:charles.rathbone@sonic.net]
> Sent: Friday, March 24, 2017 4:51 PM
> To: Standfield, Paige <Paige.Standfield@sfmta.com>

Subject: Re: requested info re: historical medallion issuance

Hi again Paige,

Many thanks for the thorough response in such short order.

Best wishes,

--

Charles Rathbone charles.rathbone@sonic.net

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

1st Appellate District

Change court

Court data last updated: 07/08/2020 11:33 AM

Disposition

San Francisco Taxi Permitholders et al. v. City and County of San Francisco et al.
Division 1
Case Number A095858

Description:	Reversed & remanded to trial court w/directions
Date:	07/11/2002
Disposition Type:	Final
Publication Status:	Signed Unpublished
Author:	Swager, Douglas E.
Participants:	Margulies, Sandra Lynn (Concur) Marchiano, James J. (Concur)
Case Citation:	none

Click here to request automatic e-mail notifications about this case.

Contact Us

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case Number: CGC00316993
Title: SF TAXI PERMIT & DRIVERS ASSOC. VS CCSF
Cause of Action: OTHER NON EXEMPT COMPLAINTS
Generated: 2020-07-08 12:44 pm

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2001-01-19	DEFTS' MEMO OF PTS & AUTHRTIES IN SUPPORT OF DEMURRER TO COMPLT		
2001-01-19	NTC OF HEARING OF DEFTS' DEMURRER TO COMPLT, CALENDAR MOTION: DEMURRER HEARING SET FOR FEB-14-2001 AT 09:30 AM IN DEPT 301		
2000-12-05	SUMMONS ISSUED		
2000-11-28	CIVIL COVER SHEET RECEIVED		
2000-11-28	PLAN I STATUS CONFERENCE DATE: HEARING SET FOR MAY-04-2001 AT 09:00 AM IN DEPT 212		
2000-11-28	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF		

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THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case Number: CGC00316993
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Date	Proceedings	Document	Fee
2001-03-09	SUPPLEMENTAL PROOF OF SERVICE BY PERSONAL DELIVERY OF REPLYPAPERS IN SUPP OF DEFTS' DEMURRER		
2001-03-09	SUPPLEMENTAL REQUEST FOR JUDICIAL NTC IN SUPP OF DEFTS' DEMURRER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF		
2001-03-09	DEFTS' OBJECTION TO PLTFS' OVERLONG MEMO OF P&A FILED IN OPPOSITION TO DEMURRER		
2001-03-09	REPLY BRIEF IN SUPP OF DEFTS' DEMURRER		
2001-03-09	MEMO OF P&A IN OPPOSITION TO DEMURRER TO COMPLAINT		
2001-02-14	PROCEEDINGS REPORTED BY JOE VICKSTEIN #4780 (301)		
2001-02-14	DEFTS CCSF AND TAX COMMISSION OF CCSF DEMR TO COMPLT-CONTD 3/14/01 PER AGREEMENT OF COUNSEL-COURT SETS BRIEFING SCHEDULE (301)		
2001-01-19	REQUEST FOR JUDICIAL NTC IN SUPPORT OF DEFTS' DEMURRER TO COMPLT		
2001-01-19	DECLARATION OF CARA E LANKFORD IN SUPPORT OF DEFT CCSF'S MTN FOR PARTIAL JUDGMENT ON THE PLEADINGS		
2001-01-19	DEMURRER OF CCSF & TAXI COMMISSIONER OF CCSF TO COMPLT		

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THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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Date	Proceedings	Document	Fee
2001-07-13	JUDGMENT [IN FAVOR OF DEFTS, CCSF, TAXI COMMISSION OF CCSF & AGAINST PLTFS] - MICROFILMED R/B F 369-04		
2001-06-25	NOTICE OF CHANGE OF ADDRESS, PERRY & ASSOCIATES, ATTY FOR PLAINTIFFS		
2001-06-25	ORDER SUSTAINING DEFTS' DEMURRER TO COMPLAINT FOR DECLARA- TORY AND INJUNCTIVE RELIEF		
2001-06-15	STATUS CONFERENCE CONTINUED: (PTR1) HEARING SET FOR JUL-27-2001 AT 09:00 AM IN DEPT 212		
2001-06-01	ORDER CONTINUING STATUS CONFERENCE (MAILING) FROM 06/15/01 X-1 09:00 AM FOR 07/27/01 X-1 09:00 AM		
2001-05-14	ORDER SUSTAINING DEFTS' DEMURRER TO COMPLT		
2001-05-04	STATUS CONFERENCE CONTINUED: (PTR1) HEARING SET FOR JUN-15-2001 AT 09:00 AM IN DEPT 212		
2001-04-18	ORDER CONTINUING STATUS CONFERENCE (MAILING) FROM 05/04/01 X-1 09:00 AM FOR 06/15/01 X-1 09:00 AM		
2001-03-14	PROCEEDINGS REPORTED BY JOE VICKSTEIN, CSR #4780 (301)		
2001-03-14	DEFTS CCSF & TAX COMMISSION OF CCSF-TENTATIVE ADOPTED-SUSTAINED WITHOUT LEAVE TO AMEND ORDER SIGNED IN OPEN COURT (301)		

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THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case Number: CGC00316993
Title: SF TAXI PERMIT & DRIVERS ASSOC. VS CCSF
Cause of Action: OTHER NON EXEMPT COMPLAINTS
Generated: 2020-07-08 10:37 am

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Date	Proceedings	Document	Fee
2005-10-06	DISMISSAL WITHOUT PREJUDICE AS TO COMPLAINT AND ENTIRE ACTION	View	
2005-10-06	SUBSTITUTION OF ATTORNEY: ROTWEIN, GEOFFREY SUBSTITUTED FOR PERRY & ASSOCIATES AS ATTORNEY FOR SAN FRANCISCO TAXI PERMITHOLDERS AND DRIVERS ASSOC		
2002-09-19	REMITTITUR PARTIAL	View	
2001-09-07	PTR1, ST/CF 9-7-01 @ 9:00 AM, OFF CALENDAR: JUDGMENT,		
2001-08-23	CERTIFIED RECORD TO COURT OF APPEALS AO95858#1(5.1)		
2001-08-02	NOTIFICATION OF FILING OF NOTICE OF APPEAL FILED		
2001-08-01	$100 NOTICE OF APPEAL PD BY FAX & FILE # 10560		
2001-08-01	NOTICE OF APPEAL FILED BY PLAINTIFFS,SAN FRANCISCO TAXI > PERMITHOLDERS AND DRIVERS ASSOCIATION, ET AL		
2001-07-27	STATUS CONFERENCE CONTINUED: (PTR1) HEARING SET FOR SEP-07-2001 AT 09:00 AM IN DEPT 212		
2001-07-17	ORDER CONTINUING STATUS CONFERENCE (MAILING) FROM 07/27/01 X-1 09:00 AM FOR 09/07/01 X-1 09:00 AM		

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REGULATIONS FOR TAXICABS AND OTHER MOTOR VEHICLES FOR HIRE

BE IT ORDAINED BY THE PEOPLE OF THE CITY AND COUNTY OF SAN FRANCISCO:

Section 1. The qualified electors of the City and County of San Francisco hereby declare it shall be the law of the City and County of San Francisco that:

(a) All taxicab permits and other vehicle for hire permits issued by the City and County of San Francisco are the property of the people of the City and County of San Francisco and shall not be sold, assigned or transferred; and

(b) The Chief of Police of the City and County of San Francisco shall have the responsibility of establishing regulations to assure prompt, courteous and honest service to the riding public; and

(c) The taxicab business shall operate under the principles of free enterprise and that taxicab operators may charge less than the maximum rate of fare set by law, as set forth below.

(d) The Police Commission shall issue a sufficient number of permits to assure adequate taxicab service throughout the City and County of San Francisco.

Section 2. **The Application For A Permit.**

(a) Any applicant for a permit to operate a taxicab or other vehicle for hire shall apply to the Police Commission for its declaration of public convenience and necessity on blanks to be furnished by the Secretary of the Police Commission, and within fifteen (15) days of the filing of such an application the Secretary of the Police Commission shall have a notice published in the official newspaper of the City and County of San Francisco. The notice shall state that an application has been filed for a license or permit to operate a taxicab or other motor vehicle for hire or motor vehicle for hire business, the name of the applicant, the kind of equipment, and the number of taxicabs or other vehicles for hire which the applicant desires to operate. The notice shall be published for three successive days.

The applicant shall pay to the City and County of San Francisco a sum to cover the costs of advertising and investigating and processing the application for each permit, such sum to be determined periodically as appropriate by the Police Commission.

Protests against the issuing of a permit may be filed with the Police Commission. The Police Commission shall consider all protests and in conducting its hearing shall have the right to call such witnesses as it desires. In all such hearings the burden of proof shall be upon the applicant to establish by clear and convincing evidence, which shall satisfy the Police Commission, that public convenience and necessity require the operation of the vehicle or vehicles for which permit application has been made, and that such application in all other respects should be granted.

(b) No permit shall be issued unless the person applying for the permit shall declare under penalty of perjury his or her intention actively and personally to engage as permittee-driver under any permit issued to him or her for at least four (4) hours during any twenty-four (24) hour period on at least seventy-five (75%) of the business days during the calendar year. No more than one permit shall be issued to any one person.

(c) For two (2) years from the effective date of this Ordinance, a preference in the issuance of any permit shall be given to any person who has driven a taxicab or other motor vehicle for hire in the City and County of San Francisco for at least one consecutive twelve (12) month period during any of the three (3) calendar years immediately prior to the filing of an application for issuance of such permit.

(d) No permit shall be issued except to a natural person and in no case to any business, firm, partnership or corporation.

(e) Subject to any other preference created in this Ordinance, all applications for a permit to operate a taxicab or other motor vehicle for hire shall be processed and considered in the order of their receipt by the Police Commission.

(f) No part of this Section 2 shall apply to any permit holder described in subparagraph (b) of Section 4 of this Ordinance.

Section 3. **Facts to be Considered by Police Commission.** The Police Commission, in determining whether or not public convenience and necessity exist for the issuance of a permit, may consider such facts as it deems pertinent, but must consider whether:

(a) The applicant is financially responsible and will maintain proper financial records.

(b) The public will not be adequately or properly served unless the application is granted.

(c) The applicant has complied with all provisions of the Municipal Code, including pertinent motor vehicle laws.

(d) The applicant will be a full-time driver, within the meaning of Section 2(b) of this Ordinance, of the taxicab

(Continued on next page)

or other motor vehicle for hire.

Section 4. **Continuous Operation**

(a) All permittees within the purview of Section 1075 of Chapter VIII, Part II of the San Francisco Municipal Code (Police Code) shall regularly and daily operate their taxicab or other motor vehicle for hire business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab or motor vehicle for hire service.

Upon abandonment of such business for a period of ten (10) consecutive days by a permittee or operator, the Police Commission shall, after five (5) days' written notice to the permittee or operator, revoke the permit or permits of such permittee or operator; provided, however, that the Chief of Police, subject to the approval of the Police Commission and only after a thorough investigation, may on written application grant to the holder of any permit hereunder permission to suspend operation pursuant to such permit for a period not to exceed ninety (90) calendar days in any one twelve (12) month period in case of sickness, death, or other similar hardship.

No permit issued under this Ordinance shall be transferrable or assignable, either expressly or by operation of law. All such permits and all rights granted under them may be rescinded and ordered revoked by the Police Commission for good cause.

(b) All persons, businesses, firms, partnerships, corporation or other entities who possess outstanding permits to operate a motor vehicle for hire on the effective date of this section must surrender and exchange any such permits for new permits within sixty (60) days of the effective date of this section. The new permits shall be non-transferrable and non-assignable either expressly or by operation of law. Any such surrender and exchange shall be without fee to the permit holder. From and after the sixty-first (61st) day after the effective date of this section, all permits not surrendered for new permits shall be void and continuance of operation under any such void permits shall be punishable by a $500.00 fine and thirty (30) days incarceration in the county jail for each such void permit so used.

Section 5. **Corporate Permittees.**

(a) If any permittee is a corporation, any sale or other transfer of ten percent (10%) or more or the stock ownership or assets of the permittee, resulting from any transaction or series of transactions and computed on a cumulative basis, will be deemed to be a sale or transfer and the permit therefore shall be null and void, unless approved by the Police Commission in conformity with the requirements of this Ordinance.

(b) Any corporation holding a permit hereunder shall maintain a stock register at the principal office of the corporation in San Francisco and the stock register shall be available to the Police Department for inspection. Such corporation shall report to the department, in writing, any of the following:

(i) Issuance or transfer of any shares of stock to any person where the issuance or transfer results in the person owning 10 percent (10%) or more of the corporate stock.

(ii) Change in any of the corporate officers which are required by Section 821 of the California Corporations Code.

(iii) Change of any members of its board of directors.

(c) Any report required pursuant to subparagraph (b) hereof shall be filed with the Police Department within ten (10) days of the change, sale or transfer to be reported.

Section 6. **Maintaining Financial and Accounting Records.**

The Controller of the City and County of San Francisco shall have the responsibility of establishing regulations for the keeping and filing of financial statements and accounting books and records by every holder of a taxicab permit or other type of permit under this Ordinance. The purpose of such regulations is to provide information to the Board of Supervisors for ordinances respecting maximum rates of fares or other charges and to the Police Commission for the performance of its duties under the law. Failure of any permit holder to comply with the Controller's regulations may be cause for revocation of all rights granted to a permit holder to operate a taxicab or other vehicle for hire.

Section 7. **Rates for Taxicabs**

Notwithstanding any provision of the San Francisco Municipal Code, any person, firm or corporation operating a taxicab or taxicabs may set a rate of fare lower than the maximum rate which may be set from time to time by appropriate ordinance; provided, however, that any such lower rate shall be filed with the Board of Supervisors in writing prior to June 1st of any year, and, if approved by the Board, shall remain in effect until September 1st of the following year.

Section 8. Sections 1076, 1077, 1079 and 1135(B) of Chapter VIII, Part II of the San Francisco Municipal Code (Police Code) are hereby repealed.

Section 9. Sections 128.1, 128.2 and 128.3 of Part III, Article 2 of the San Francisco Municipal Code, are hereby repealed.

Section 10. **Severability.** If any section, sub-section, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The qualified electors of the City and County of San Francisco hereby declare that they would have passed each section, sub-section, sub-division, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sub-division, paragraphs, sentence, clause or phrases be declared unconstitutional, invalid or ineffective.

- Temporary Suspension of the Post-K driving requirement due to COVID-19.pdf

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May 7, 2020

To: Transportation Director Jeff Tumlin; SFMTA Board
From: Medallion Holders Association (MHA); San Francisco Taxi Coalition (SFTC)
Re: Please eliminate Transportation Code section 1109(c)

This letter requests that you eliminate Transportation Code section 1109(c): "Full-Time Driving Requirement" in its entirety. Due to COVID-19, medical facilities are discouraging non-essential visits, yet aging and disabled Proposition K medallion holders (MHs) who fail to process medical paperwork annually to document their inability to drive taxi full-time, if at all, are subject to permit revocation.

History of this topic

To direct medallions towards actual taxi drivers, Proposition K of 1978 had applicants swear their "intention" to drive taxi full-time. **Regulators have transubstantiated this "intention oath" into a never-ending "driving requirement" and miscodified it as such**. In 1990 the Americans with Disabilities Act (ADA) became law. Logically, ADA protects the permit of a MH who is rear-ended and paralyzed while driving a taxi, e.g.

Around 2000, however, the Taxi Commission began revoking medallions ***because*** some MHs had become disabled and could no longer drive taxi full-time. MHA filed a State Court lawsuit, alleging ADA violation. The city's Board of Appeals stayed all such revocations for the duration of the litigation. A Superior Court Judge granted summary judgment for the City, whereas the State Appeals Court later issued a murky, partial reversal which resulted in the current annual medical variance paperwork policy.

We provide two attachments above as evidence why you should eliminate the code section. The year 2004 Taxi Commission chart reveals that even then, new medallion holders often were already senior citizens. The 2003 *SF Chronicle* news article describes a horrific accident which occurred on a rainy night. A feeble senior MH who had pleaded unsuccessfully to be relieved of driving duties lost control of his taxi, crushing the bodies of two bystanders on the sidewalk. Yellow Cab Co-op paid a $14 million dollar settlement, never fully recovered financially, and filed for bankruptcy in 2016.

Medical and taxi staff are better served by ending this policy, which diverts their resources from more important matters. Some MHs have repeatedly gone through this process, which also entails vehicle trips to and from a physician appointment, a medical facility to retrieve the completed forms, and the SFMTA office to turn in the documents.

In summary, reasons for eliminating the entire "driving requirement" code section include **public safety**, humaneness, common sense, and ADA compliance. Alternatively, the Board might choose to amend the code by removing driving requirements for all MHs past a certain age. We request this item be included on a Board meeting agenda at the earliest possible date. Thank you for your consideration.

Carl Macmurdo, MHA President Bernard Dethiers, SFTC President

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 09-138

WHEREAS, Administrative Code Appendix 6, Sections 2 and 3, and Transportation Code, Division II, Section 1109(c) require all taxi and ramp taxi medallion holders to be Full-Time Drivers; and

WHEREAS, The terms "Full-Time Driving" and "Full-Time Driver" are defined in Transportation Code, Division II, Section 1102(l) as any driver actually engaged in, or the activity comprised of (respectively) the mechanical operation and physical charge and custody of a taxi or ramp taxi which is available for hire or actually hired for at least 156 four-hour shifts or 800 hours, whichever shall come first; and,

WHEREAS, Pursuant to Transportation Code Division II, Section 1120(a)(1), failure to meet the Full-Time Driving requirement is grounds for revocation of a taxi or ramp taxi medallion; and

WHEREAS, A medallion holder should be relieved of the Full-Time Driving requirement for limited periods of time during which the medallion holder is temporarily rendered physically incapable of driving; and,

WHEREAS, By contrast, a medallion holder who is permanently physically incapable of meeting the Full-Time Driving requirement and will not be able to return to Full-Time Driving should not be entitled to such relief, and may properly be required to relinquish his or her medallion to the SFMTA; and,

WHEREAS, The SFMTA Board wishes to adopt a policy to be uniformly applied to medallion holders who request a temporary suspension or temporary reduction of the Full-Time Driving requirement for reasons of temporary physical incapacity; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors establishes the following policy for medallion holders who request temporary suspension or temporary reduction of the Full-Time Driving requirement for reasons of temporary physical incapacity:

1. That applications for temporary suspension or temporary reduction of the Full-Time Driving requirement be submitted to the SFMTA Division of Taxis and Accessible Services on a form approved by and containing all information required by the SFMTA; and
2. That all requests for temporary suspension or temporary reduction of the Full-Time Driving requirement be substantiated by written documentation of a physician who has actually examined the applicant for the condition that is claimed as the basis for the request; and
3. That documentation of the physical condition that prevents Full-Time Driving that is prepared by the physician shall include a recommended modification, such as a limitation of

number of hours of driving per day, week or month and/or an assessment of the amount of time that it would take the medallion holder to recover from the condition and resume Full-Time Driving; and

4. That any request is subject to investigation by SFMTA staff for verification purposes, which may include but are not limited to a physical assessment of the medallion holder or seeking additional medical opinions of the medallion holder's condition; and

5. That any temporary suspension or reduction of the Full-Time Driving requirement for physical incapacity must be requested and approved on an annual basis; and

6. That no suspensions or reductions of the Full-Time Driving requirement pursuant to this temporary leave policy may cumulatively exceed three calendar years for the same condition.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of AUG 0 4 2009.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Medallion Type	Definition	Total Authorized	Total In Service	Total on List to Surrender	Total on List to Re Transfer
Corporate	Prior to Prop-K (1978) medallions could be owned by a corportation. The corporation could not change ownership by more than 10% or the medallion would revert to the city. These medallions cannot be transferred at this time	92	92	N/A	N/A
Pre-K	Prior to Prop-K (1978) medallions could be owned by anyone and could be held by more than one person. There is not a driving requirement by the owner of the medallion. Currently these medallions can be transferred if the medallion holder is at least 60 years old or has a permanent disability	196	196	97	N/A
Post-K Earned	These medallions were offered after 1978. It was limited to 1 per taxi driver and could only be owned by an individual. There is also a driving requirement (800 hours or 156 4-hour shifts) per year. Currently these medallions can be transferred if the medallion holder is at least 60 years old or has a permanent disability	605	605	494	N/A
Transferable Discount	These medallions were transferred (purchased) under the Medallion Sales Pilot Program that started 2010 and the Medallion Transfer Program that replaced the Medallion Sales Pilot Program in 2012. Any person who purchased a medallion under either program may surrender their purchased permit for sale at any time with no restriction on age or disability. There is a driving requirement (800 hours or 156 4-hour shifts) per year for these permits.	200	156	N/A	93
Transferable Full Price	These medallions were transferred (purchased) under the Medallion Sales Pilot Program that started 2010 and the Medallion Transfer Program that replaced the Medallion Sales Pilot Program in 2012. Any person who purchased a medallion under either program may surrender their purchased permit for sale at any time with no restriction on age or disability. There is a driving requirement (800 hours or 156 4-hour shifts) per year for these permits.	642	544	N/A	276
Ramp	Accessible services medallions. The medallions operate in ramp vehicle only to accommodate passengers with wheelchair needs. Currently medallions are operated by taxi drivers. However, the medallions will be leased to the company in the future. Medallions cannot be transferred	100	42		N/A
8000 – series	Medallions that are leased to the taxi companies. Each medallion are leased for $1000 with $100 going towards the driver fund. These medallions cannot be transferred	100	44	N/A	N/A
S - series	Based on taxi driver senority. These medallions were given to individuals that weren't on the waitlist, never owned a medallion. The medallion is issued based upon the year the applicant obained their A-card permit. The permit is issued for 4 years. These permits are restricted to no more than 90 hours per week.	140	129	N/A	N/A
	As of 3/24/17	**2,075**	**1,808**	**591**	**369**

HASSARD BONNINGTON LLP
PHILIP S. WARD, ESQ. (California SBN 51768)
RICHARD G. KATERNDAHL, ESQ. (California SBN 88492)
Two Embarcadero Center, Suite 1800
San Francisco, California 94111-3993
Telephone: (415) 288-9800
Facsimile: (415) 288-9802
e-mail: psw@hassard.com
rgk@hassard.com

Attorneys for Plaintiffs and Appellants
WILLIAM SLONE and MICHAEL MERRITHEW

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SLONE and MICHAEL MERRITHEW, Plaintiffs, v. TAXI COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, ET AL.	Case No. 08-16726 DC No. 07-cv-03335-JSW (N.D.Cal., San Francisco) MOTION TO DISMISS APPEAL [FRAP 42(b)]

Plaintiffs and Appellants WILLIAM SLONE and MICHAEL MERRITHEW hereby move this Court for an order dismissing the above-captioned appeal on the conditions set forth in the supporting Stipulation in Support of Motion to Dismiss Appeal (the "Stipulation").

For the reasons explained in the Stipulation, the circumstances out of which this litigation arose have substantially changed since the District Court entered judgment below on June 30, 2008. Those changes likely mean that a decision by this Court resolving the merits of this appeal would be deprived of practical significance, rendering it more or less purely academic. Accordingly, the parties have agreed that their interests would not be served by further prosecution of this appeal and its dismissal would promote the interests of judicial economy and efficiency.

Pursuant to and in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure, Plaintiff and Appellant MICHAEL SLONE voluntarily consents to the dismissal of his appeal. Plaintiff and Appellant MICHAEL MERRITHEW moves the Court to dismiss his appeal subject to it being reinstated under the circumstances described in the Stipulation.

The parties have each agreed to bear their own costs, including attorneys' fees. There are no outstanding costs herein that remain unpaid.

DATED: August 10, 2010

HASSARD BONNINGTON LLP

By /s/ Philip S. Ward
Philip S. Ward

Attorneys for Appellants William Slone and Michael Merrithew

HASSARD BONNINGTON LLP
PHILIP S. WARD, ESQ. (California SBN 51768)
RICHARD G. KATERNDAHL, ESQ. (California SBN 88492)
Two Embarcadero Center, Suite 1800
San Francisco, California 94111-3993
Telephone: (415) 288-9800
Facsimile: (415) 288-9802
e-mail: psw@hassard.com
rgk@hassard.com

Attorneys for Plaintiffs and Appellants
WILLIAM SLONE and MICHAEL MERRITHEW

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM SLONE and MICHAEL MERRITHEW, Plaintiffs, v. TAXI COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, ET AL.	Case No. 08-16726 DC No. 07-cv-03335-JSW (N.D.Cal., San Francisco) STIPULATION IN SUPPORT OF MOTION TO DISMISS APPEAL [FRAP 42(b)]

IT IS HEREBY STIPULATED by and between the above-captioned parties, through their attorneys of record, as follows:

1. When this action was commenced in the District Court, municipal authority for regulating motor vehicle for hire permits (herein "taxi

medallions") rested with the respondent Taxi Commission of the City and County of San Francisco. The Taxi Commission's regulatory authority was exercised, in significant part, pursuant to and in accordance with a 1978 initiative ordinance commonly referred to as Proposition K [EOR 174-177] which contained a so-called "full-time driving requirement" [EOR 175, Section 4];

2. In their complaint below, Appellants contended that the Taxi Commission's policy of granting only limited relief from the "full-time driving requirement" to holders of taxi medallions claiming physical disabilities that prevented them from safely driving a motor vehicle violated the Americans With Disabilities Act, 42 U.S.C. sections 12132, *et seq.* ("ADA"). In the judgment challenged by Appellants in this appeal, the District Court held that the Taxi Commission's interpretation and application of the "full-time driving requirement" was consistent with and not in violation of the ADA [EOR 2-10];

3. After judgment was entered by the District Court on June 30, 2008 [EOR 1], the San Francisco Board of Supervisors exercised the authority granted to it by a November, 2007 amendment to the San Francisco Charter to abolish the Taxi Commission and transfer its regulatory authority over taxicabs to the San Francisco Municipal Transportation Agency ("MTA");

4. In August, 2009, the MTA revoked the previously-adopted policy of the Taxi Commission granting limited relief from the "full-time driving

requirement" for holders of taxi medallions claiming to be physically disabled. In its place, the MTA expanded the relief policy beyond the limits that existed when the District Court entered judgment ("the 2009 policy");[1]

5. Earlier this year, the MTA announced a new initiative whereby certain holders of taxi medallions claiming disabled status could enroll in a "pilot program" which would allow the medallion holder to sell his or her medallion to an authorized purchaser, an option which did not exist when the District Court entered judgment in 2008;

6. Appellant Michael Merrithew has filed with the MTA a request to participate in the "pilot program." If he is allowed to consummate a sale of his taxi medallion, it will have the effect of mooting his appeal because he will no longer be a medallion holder subject to the "full-time driving requirement";

7. Appellant William Slone has elected not to participate in the "pilot program" but instead subject himself to the MTA's 2009 policy. In view of the regulatory changes that have occurred since the District Court entered judgment in 2008, however, Appellant Slone has authorized his counsel of record to represent to the Court that he no longer wishes to prosecute the instant appeal and instead consents to its dismissal pursuant to FRAP 42(b);

[1] See September 9, 2009 letter to the Clerk of the Court from the San Francisco City Attorney, and specifically Exhibit A thereto.

8. The parties further stipulate and agree that the dismissal of Appellant Merrithew's appeal shall be without prejudice to its reinstatement in the event that: (a) before his medallion is sold and transferred, the MTA abandons or is otherwise prevented from implementing the "pilot program" authorizing the transfer and sale of taxi medallions by disabled permit holders or (b) for any other reason, the MTA does not allow him to consummate a transfer and sale of his medallion;

9. The parties further stipulate and agree that they shall each bear their own costs in this appeal, including their own attorneys' fees, and that no costs herein remain unpaid.

DATED: August 6, 2010 HASSARD BONNINGTON LLP

By _____
Philip S. Ward

Attorneys for Appellants William Slone and Michael Merrithew

DATED: August 4, 2010 DENNIS J. HERRERA, CITY ATTORNEY

By _____
Vince Chhabria, Deputy City Attorney

Attorneys for Respondents Taxi Commission, City and County of San Francisco; Heidi Machen, Executive Director; City and County of San Francisco

9th Circuit Case Number(s) 08-16726

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

****

CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [ ].

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) [ ]

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [Aug 10, 2010] .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Joseph M. Breall, Esq.
BREALL & BREALL, LLP
1255 Post St., Suite 1800
San Francisco, CA 94109

Carl Macmurdo
431 Frederick Street, #1
San Francisco, CA 94117

Signature (use "s/" format) /s/ Philip S. Ward

(e) **Notice of Decision.**

(1) The Hearing Officer shall issue a written Notice of Decision within 30 days of the date of the hearing upholding or overturning the Citation, Notice of Nonrenewal under Section 1105(a)(5)(B), Notice of Denial under Section 1117(c), Notice of Inactive Status under Section 1103(b)(4), or Notice of Summary Suspension under Section 1121. The Notice of Decision shall be based upon the criteria set forth in this Article 1100, include findings, and shall set forth evidence in support of each finding. No later than three business days following issuance of the Hearing Officer's Notice of Decision, the SFMTA shall post the results of any disciplinary case against a Permit Holder in accordance with Section 1123, referenced by the date of hearing, the name of the Respondent, the type of permit, and the action taken. The Hearing Officer shall serve the full text of the Notice of Decision on Respondent in accordance with Section 1120(i) no later than the business day following the issuance of the Notice of Decision. The deadline for the issuance of a decision may be extended if the Hearing Officer requests additional evidence 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 Notice of Decision is served on the Respondent in accordance with Section 1120(i). In the case of a Notice of Denial, if the Hearing Officer determines that a permit applicant is qualified for the permit, the SFMTA shall issue the permit or modification within 15 business days of the Notice of Decision.

(f) ***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, or policy matters that do not involve any pending case regarding any individual permit or permit application.

SEC. 1116. TAXI MEDALLION TRANSFER PROGRAM.

(a) **Surrender for Consideration.**

(1) The following natural persons are eligible to surrender their Medallions to the SFMTA for consideration in accordance with this Section:

(A) Any Medallion Holder, except a Ramp Taxi Medallion Holder or a Single Operator Part-time Taxi Medallion Holder, who has demonstrated to the satisfaction of the SFMTA that he or she has a bona fide disability that permanently prevents him or her from satisfying the Full-Time Driving requirement, whether or not he or she is subject to the Full-Time Driving Requirement, or

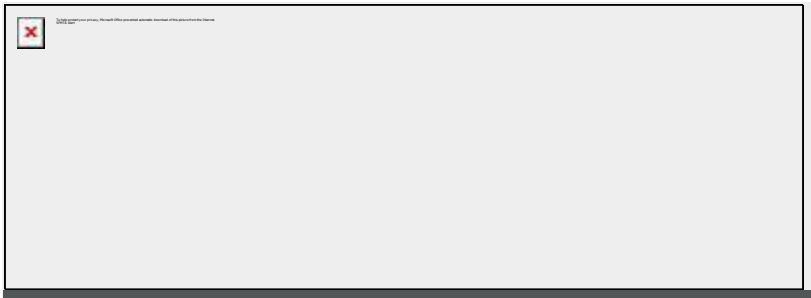
(B) Any Post-K Medallion Holder who has attained the age of 60.

(b) **Medallion Surrender Payment.** As consideration for surrender of a Medallion in accordance with this Section, the SFMTA shall make a Medallion Surrender Payment in the amount of $200,000 to the Medallion Holder, when a Transferee has been identified to which the surrendered Medallion will be initially transferred and a properly executed Transfer Agreement has been received from the identified Transferee.

(c) **Qualified Medallion Transferees.** Upon surrender, the SFMTA may transfer the Surrendered Medallion under the Taxi Medallion Transfer Program to a Transferee who acknowledges and agrees that the Transferable Medallion is subject to the provisions of this Section. The SFMTA shall make offers of Initial Transfer to such Transferees in chronological order by the date that each complete Medallion Application was received from a qualified applicant.

Longaway, Alec (BOA)

From: SFMTA Municipal Transportation Agency <sfmta@public.govdelivery.com>
Sent: Friday, July 31, 2020 5:21 PM
To: cmac906@yahoo.com
Subject: Temporary Suspension of the Post-K driving requirement due to COVID-19



July 31, 2020

TO: Post-K Medallion Holders

Re: Temporary Suspension of the Post-K driving requirement due to COVID-19

Pursuant to Transportation Code, Division II, Section 1109(c), all Post-K medallion holders are required to operate their medallion full time.

(c) **Full-Time Driving Requirement.**

(1) Every Medallion Holder who is a natural person and who acquired his or her Medallion between June 6, 1978 and March 27, 2010 shall be a Full-Time Driver.

"Full-Time Driver" or **"Full-Time Driving"** shall mean any Driver actually engaged in, or the activity comprised of (respectively) the mechanical operation and physical charge and custody of a Taxi or Ramp Taxi which is available for hire or actually hired for at least 156 four-hour shifts or 800 hours during a calendar year.

On February 25, 2020, the Mayor declared a local emergency in response to the COVID-19 pandemic, issuing a Proclamation of the Mayor Declaring the Existence of a Local Emergency (COVID-19 Emergency). On March 16, 2020, San Francisco's Health Officer issued a Public Health Order in response to the COVID-19 Emergency, requiring that residents remain in place, with the only exception being for essential needs (Shelter in Place Order or SIP). For the duration of the Shelter in Place Order, which may be updated periodically, the Full-Time driving requirement for Post-K medallion holders will be suspended.

During any year in which operation of a Post-K medallion was temporarily suspended in accordance with this memo, the number of driving hours required to meet the Full-Time Driving Requirement shall be reduced by the same proportion as the ratio of the Permit Holder's excused driving hours to the hours remaining in the year.

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

DENNIS J. HERRERA, State Bar #139669
City Attorney
JAMES M. EMERY, State Bar #153630
RONALD H. LEE, State Bar #238720
JAIME M. HULING DELAYE, State Bar #270784
REBECCA A. BERS, State Bar #287111
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-4628
Facsimile: (415) 554-4757
E-Mail: jim.emery@sfcityatty.org

Attorneys for Respondent
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SAN FRANCISCO BOARD OF APPEALS

GEORGE HORBAL, Appellant, vs. SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, Respondent.	Appeal No. 21-064 Medallion Permit No. 1303 **SFMTA TAXI DIVISION'S ANSWERING BRIEF** Hearing Date: Wednesday, September 1, 2021 Time: 5:00 p.m. Place: City Hall, Room 416 [Zoom Remote Platform] [Exemption from File Fees per Cal. Gov. Code §§ 6103(a)-(b)]

INTRODUCTION

Mr. Horbal challenges the decision of the Hearing Officer upholding the SFMTA Taxi Division's decision not to renew Mr. Horbal's taxi medallion. Mr. Horbal acknowledges the Transportation Code requires him to comply with a full-time driving requirement as a condition for renewing his medallion, and that he is unable to comply. Mr. Horbal's appeal asks this Board of Appeals to disregard and rewrite the Transportation Code. The Hearing Officer, on reconsideration, recognized it was improper to rely on "equitable considerations" to create an uncodified "unusual circumstances" exception to the Transportation Code's requirements for medallion renewal. For the same reasons, this Board of Appeals should apply the Transportation Code and affirm the Hearing Officer's decision.

BACKGROUND

The evidence before the Hearing Officer is undisputed, and Mr. Horbal does not contest the Hearing Officer's findings. Mr. Horbal was issued a post-K taxi medallion. When they passed Proposition K in 1978, San Francisco voters reformed the City's taxi medallion system. Post-K medallions were issued for free to active drivers, and each driver was limited to a single medallion. Proposition K imposed a full-time driving requirement on medallion holders. A driver received his or her post-K medallion off a waiting list. When a post-K medallion holder stops driving, Proposition K contemplated that the driver would return the medallion to SFMTA, so the SFMTA could issue the medallion to a new driver who had been waiting for it. Proposition K did not contemplate that drivers would continue to hold their post-K medallions when they could no longer drive safely and responsibly.

A taxi medallion is a permit, authorizing its holder to operate a taxi on San Francisco streets. An A-card is a permit that authorizes its holder to drive a taxi. To be eligible to drive a taxi in San Francisco, the driver must hold an A-card, whether or not the driver also has a medallion.

A medallion holder has no property interest in a medallion or an A-card. The Transportation Code informs the public that "Permits granted pursuant to this Article [including A-cards and taxi

medallions] constitute a privilege and are not the property of the Permit Holder." (S.F Transp. Code § 1105(a)(3).)

At the hearing, Mr. Horbal confirmed he does not have a California driver's license, and his A-card expired in 2017 and he has never renewed it. Mr. Horbal testified he is not physically capable of driving, and he is wheelchair-bound.

ARGUMENT

San Francisco's Transportation Code establishes that a Hearing Officer decision reviewing a notice of nonrenewal must be "based upon the criteria set forth in this Article 1100, include findings, and shall set forth evidence in support of each finding." (S.F Transp. Code § 1120(e)(1).) Enforcement discretion rests with the Taxi Division, not with the Hearing Officer.[1]

Mr. Horbal acknowledges he lacks an A-card, he is unable to comply with a full-time driving requirement, and his disability is permanent. Mr. Horbal makes a single substantive argument. Mr. Horbal asserts he is not subject to a driving requirement or the A-card requirement as a condition for maintaining his medallion.

I. Mr. Horbal's Argument #1: SFMTA had authority to enact Section 1109(c)(1) of the Transportation Code, and the Board of Appeal Cannot "Force" the SFMTA to Amend the Transportation Code.

Mr. Horbal acknowledges Section 1109(c)(1) of the Transportation Code imposes a full-time driver requirement on him as a post-K medallion holder. Section 1109(c)(1) provides: "Every Medallion Holder who is a natural person and who acquired his or her medallion between June 6, 1978 and March 27, 2010 shall be a Full-Time Driver." Mr. Horbal argues the text of Proposition K approved by voters in 1978 only required post-K medallion holders to state their intention to be full-time drivers. Mr. Horbal argues Proposition K did not actually require medallion holders to drive full

[1] Mr. Horbal makes a procedural argument that the Hearing Office lacked jurisdiction to reconsider his decision. (Horbal Appeal Br. at p 2.) .Section 1120(e)(2), specifying the effective date of a Hearing Officer decision, does not limit the Hearing Officer's continuing jurisdiction after issuing a decision. Until an appeal has been filed, or the time to appeal has expired, the Hearing Officer retains jurisdiction to correct mistakes in his Decision. A contrary rule prohibiting Hearing Officers from correcting their own mistakes would result in an unnecessary and unfortunate proliferation of appeals to this Board of Appeals.

Mr. Horbal's suspicion of improper ex parte communications (see Horbal Appeal Br. at p 2) is baseless.

time, and that Section 1109(c)(1) therefore imposes a requirement that Proposition K did not authorize. (Horbal Appeal Br., at pp 5-6.)

Article 1100 of the Transportation Code, however, expressly imposes the full-time driver requirement, and Section 1120(e)(1) expressly requires the Hearing Officer to base his decision "upon the criteria set forth in this Article 1100." The Hearing Officer, therefore, was bound to apply the express terms of Section 1109(c)(1).

The courts that have considered this question recognize Proposition K itself imposed a full-time driving requirement on medallion holders. Contrary to Mr. Horbal's description of the case, the Court of Appeal in its 2002 decision in the *San Francisco Taxi Permitholders* case, upheld the full-time driving requirement for post-K medallion holders and rejected any "changed circumstances" exception that would exempt an individual medallion holder from the driving requirement. (Submitted herewith as Exh. A.)[2] Likewise, the federal district court in *Slone v. Taxi Commission* (N.D. Cal. Case No. C 07-03335 JSW June 30 2008) 2008 WL 2632101, held that Proposition K imposed a full-time driving requirement. (Submitted herewith as Exh. B.).

In any event, 2007's Proposition A superseded 1978's Proposition K. By enacting Proposition A in 2007, San Francisco voters amended San Francisco's Charter to authorize SFMTA to enact new taxi regulations. Furthermore, "[o]nce adopted, Agency regulations shall thereafter supersede all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations." (S.F. Charter §8A.101(b).) Accordingly, Proposition A moots the question whether Proposition K authorized Section 1109(c)(1).

For these reasons, Section 1109(c)(1)'s full-time driving requirement must govern the decision in this case.

II. Mr. Horbal's Argument #2: The Driving Requirement is Consistent with the ADA.

Mr. Horbal presents a policy argument that "feeble, elderly" medallion holders should be allowed to keep their post-K medallions when they are no longer able to drive safely. (Horbal Appeal

[2] The Court of Appeal decision is unpublished, and under Court rules cannot be cited as legal authority.

Br., at pp 6-8.) Mr. Horbal complains the Transportation Code provisions imposing the full-time driving requirement are "arbitrary and capricious," discriminate against disabled medallion holders, and violate the Americans with Disabilities Act ("ADA"). (*Ibid*.)

The courts disagree. In the *Slone* case. the federal district court granted summary judgment to the City, rejecting the identical argument that Mr. Horbal presents here – that the full-time driving requirement violates the ADA. The district court in *Slone* held the full-time driving requirement complies fully with the ADA. Slone's and Merrithew's stipulation dismissing their appeal did nothing to undermine the correctness of the district court's decision in that case. To the contrary, Slone simply abandoned his appeal.[3] Merrithew conditioned his dismissal on his ability to participate in the SFMTA's pilot program and receive consideration in exchange for his medallion. According to the terms of the stipulation, if Merrithew were prevented from exchanging his medallion for consideration, he would be able to reinstate his appeal and the litigation would resume.

III. Mr. Horbal's Argument #3: The *Slone* Agreement Fully Supports Nonrenewal in this Case.

Mr. Horbal argues that Merrithew's expectation of consideration in exchange for his medallion somehow confers on Mr. Horbal a right to compensation for his medallion. (Horbal Appeal Br., at pp 8-10.) The Transportation Code forecloses Mr. Horbal's argument. Specifically addressing medallion surrenders, section 1116(a)(4) of the Transportation Code provides that the Medallion Transfer Program "does not confer on a Medallion Holder a vested right, or other legal entitlement, to surrender a Medallion for consideration." (Transp. Code § 1116(a)(4).) In any event, the *Slone* agreement itself did not guarantee Merrithew compensation for his medallion. If he were unable to complete his medallion transfer for any reason, he would be entitled only to resume the litigation he had already lost in the district court.

Mr. Horbal also relies on SFMTA Resolution 09-138, which is also referenced in the *Slone* stipulation. Resolution 09-138 provides a three-year exemption from the full-time driving requirement for drivers with a temporary disability. Resolution 09-138 does not help Mr. Horbal. Mr. Horbal has

[3] Mr. Horbal's contrary description of the *Slone* stipulation is not accurate.

a permanent disability, not a temporary disability. Resolution 09-138 expressly provides: "a Medallion Holder who is permanently physically incapable of meeting the Full-Time Driving requirement and will not be able to return to Full-Time Driving should not be entitled to such relief, and may properly be required to relinquish his or her medallion to the SFMTA." Mr. Horbal's permanent disability makes him ineligible to invoke Resolution 09-138's temporary exemption from the driver requirement. Furthermore, Resolution 09-138 temporarily exempts a driver from the driving requirement, not from the separate requirement that the medallion holder also maintain an A-card.

IV. Mr. Horbal's Argument #4: Enforcement Decisions by SFMTA Staff in Other Cases Have No Bearing on Mr. Horbal's Eligibility for Renewal.

Mr. Horbal asserts that at least once, an SFMTA staff member, Ms. Paige Standfield, a taxi investigator, told a medallion holder he did not need to renew his A-card during the period he was disabled and not driving. (Horbal Appeal Br. at p 10.) But Ms. Standfield's communications with Mr. Rathbone do not affect Mr. Horbal or change the requirements of the Transportation Code. There is no information whether Mr. Rathbone's situation was comparable to Mr. Horbal's. The Taxi Division may properly exercise enforcement discretion. Mr. Horbal does not assert he relied on any advice he received from SFMTA. And in any event, equitable estoppel applies against a government entity only under narrow circumstances, and Mr. Horbal has not even attempted to establish those circumstances.

The elements of equitable estoppel are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Alameda County Deputy Sheriff's Assn v. Alameda County Employees' Retirement Assn* (2020) 9 Cal.5th 1032, 1072.) Equitable estoppel is applied only sparingly against a government entity. (*Id.*) "Equitable estoppel will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy." (*City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 279 (internal quotation and citation omitted).) None of the elements are present for Mr. Horbal to invoke equitable estoppel against SFMTA based on Ms. Standfield's communication with Mr. Rathbone.

V. Mr. Horbal's Miscellaneous Arguments and Information

A. The 2020 Temporary Covid Waiver of the Driver Requirement Does Not Excuse Mr. Horbal's Failure to Maintain his A-card.

Mr. Horbal invokes the 2020 temporary suspension of the full-time driver requirement for the duration of the Mayor's shelter-in-place covid safety order. (Horbal Appeal Br. at p 10.) Mr. Horbal's A-card expired in 2017, and the temporary covid suspension does not excuse noncompliance with the A-card requirement. These covid orders do not excuse Mr. Horbal's long-term and continuing non-compliance with the statutory requirements for medallion renewal.

B. Public Requests that SFMTA Amend the Transportation Code Do Not Excuse Mr. Horbal's Noncompliance with the Statutory Requirements for Medallion Renewal.

Mr. Horbal next points to a public request that the SFMTA amend the Transportation Code to amend or eliminate the full-time driving requirement. (Horbal Appeal Br. at p 11.) Mr. Horbal does not attempt to explain why a request from the public to amend the Code should excuse noncompliance with the Code as it exists.

C. SFMTA's Pending Litigation Against the San Francisco Federal Credit Union Does Not Alter the Statutory Requirements for Mr. Horbal's Medallion Renewal.

Finally, Mr. Horbal describes pending litigation between SFMTA and the San Francisco Federal Credit Union over the Taxi Medallion Transfer Program. (Horbal Appeal Br. at pp. 11-12.) Mr. Horbal speculates that when the litigation resolves, medallion transfers for consideration may resume. As explained above, however, Mr. Horbal has no "vested right, or other legal entitlement, to surrender a Medallion for consideration." (Transp. Code § 1116(a)(4).) Furthermore, the Hearing Officer's decision must be "based upon the criteria set forth in this Article 1100." (S.F Transp. Code § 1120(e)(1).) And, as discussed above, the Court of Appeal in the *San Francisco Taxi Permitholders* case disapproved an equitable "changed circumstances" exception to the full-time driving requirement. Accordingly, the pending litigation cannot justify Mr. Horbal's noncompliance with the statutory renewal requirements.

CONCLUSION

The SFMTA's Taxi Division is acutely aware of the grave impact of transportation network companies, like Uber and Lyft, and the pandemic on drivers and medallion holders. The SFMTA

shares the Hearing Officer's empathy for the taxi industry in general and specifically for Mr. Horbal. Over the past several years, the SFMTA has enacted numerous reforms to support and strengthen the taxi industry. As San Francisco's taxi regulator, the Taxi Division has determined Mr. Horbal's medallion is not eligible for renewal.

For the foregoing reasons, the Board of Appeals should affirm the Hearing Officer's decision approving the Taxi Division's nonrenewal of Mr. Horbal's taxi medallion.

Dated: August 25, 2021

DENNIS J. HERRERA
City Attorney
JAMES M. EMERY
RONALD H. LEE
JAIME M. HULING DELAYE
REBECCA A. BERS
Deputy City Attorneys

By: s/James M. Emery
JAMES M. EMERY
Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO,
appearing herein as SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

PROOF OF SERVICE

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102.

On August 25, 2021, I served the following document(s):

SFMTA TAXI DIVISION'S ANSWERING BRIEF

EXHIBITS IN SUPPORT OF SFMTA TAXI DIVISION'S ANSWERING BRIEF

on the following persons at the locations specified:

George Horbal
c/o Carl Macmurdo
Agent for Appellant
431 Frederick Street, Apt. #1
San Francisco, CA 94117
Email: georgehenrygh73@gmail.com
cmac906@gmail.com

[Determination Holder(s)/Appellant]

Philip Cranna
Enforcement and Legal Affairs Manager
SFMTA
1 So. Van Ness Avenue
San Francisco, CA 94102
Email: Philip.cranna@sfmta.com

San Francisco Board of Appeals
49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Telephone: (628) 652-1150
Email: boardofappeals@sfgov.org
julie.rosenberg@sfgov.org

in the manner indicated below:

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: martina.hassett@sfcityatty.org ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed August 25, 2021 at San Francisco, California.

Pamela Cheeseborough

DENNIS J. HERRERA, State Bar #139669
City Attorney
JAMES M. EMERY, State Bar #153630
RONALD H. LEE, State Bar #238720
JAIME M. HULING DELAYE, State Bar #270784
REBECCA A. BERS, State Bar #287111
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-4628
Facsimile: (415) 554-4757
E-Mail: jim.emery@sfcityatty.org

Attorneys for Respondent
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SAN FRANCISCO BOARD OF APPEALS

GEORGE HORBAL,

Appellant,

vs.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,

Respondent.

Appeal No. 21-064

Medallion Permit No. 1303

EXHIBITS IN SUPPORT OF SFMTA TAXI DIVISION'S ANSWERING BRIEF

Hearing Date: Wednesday, September 1, 2021
Time: 5:00 p.m.
Place: City Hall, Room 416
[Zoom Remote Platform]

[Exemption from File Fees per Cal. Gov. Code §§ 6103(a)-(b]

Attachments: Exhibits A - B

INDEX TO EXHIBITS

Exhibit	Description
A	*San Francisco Taxi Permitholders and Drivers Assoc. v. CCSF* (Cal. Ct. App. Case No. A095858, July 11, 2002) 2002 WL 1485354
B	*Slone v. Taxi Commission* (N.D. Cal. Case No. C 07-03335 JSW, June 30 2008) 2008 WL 2632101

EXHIBIT A

TO

SFMTA TAXI DIVISION'S ANSWERING BRIEF

2002 WL 1485354
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 1, California.

SAN FRANCISCO TAXI PERMITHOLDERS AND DRIVERS ASSOCIATION et al., Plaintiffs and Appellants,
v.
CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents.

No. A095858.
|
(San Francisco County Super. Ct. No. 316993).
|
July 11, 2002.

Synopsis

Nonprofit corporation of taxicab permit holders and drivers, and two individual members of corporation, sought declaratory and injunctive relief against city, relating to city's requirement that holders of permits to operate taxicab businesses must be full-time taxicab drivers and must meet continued-driving requirement. The Superior Court, San Francisco County, No. 316993, sustained city's demurrer without leave to amend. Plaintiffs appealed. The Court of Appeal, Swager, J., held that: (1) full-time driver requirement could not be construed to contain "changed circumstances" exception; (2) plaintiffs could seek declaration regarding a possible changed circumstances exception to continued-driving requirement; (3) plaintiffs did not present actual controversy regarding extent and limits of city taxi commission's power to adopt and apply a standard for compliance with continued-driving requirement; and (4) city's administrative rules regarding full-time driving requirement were reasonable.

Affirmed in part, reversed in part.

West Headnotes (9)

[1] **Automobiles** Eligibility for and vehicles subject to license or certificate

Automobiles Revocation, forfeiture, or suspension of license

City ordinance requiring holders of permits to operate taxicab businesses to be full-time taxicab drivers was not flexible enough to allow an interpretation which would provide a "changed circumstances" exception excusing a permit holder from meeting full-time driving requirement, based on circumstances arising after issuance of permit, and thus, existence of changed circumstances did not affect city's power to admonish, discipline, or revoke a permit.

[2] **Automobiles** Municipal ordinances

Automobiles Revocation, forfeiture, or suspension of license

Provision of city's police code, defining "good cause" for revocation of permit to operate a taxicab business as including a permit holder's failure to be a full-time taxicab driver, was within city's power to implement voter-initiated ordinance imposing full-time driver and continued-driving requirements for permits to operate taxicab businesses and authorizing police commission to revoke such permits upon good cause; city was using its legislative power to interpret the ordinance by enumerating considerations constituting good cause, and "good cause" definition's use of ordinance's full-time driver standard did not necessarily conflict with ordinance's more generally worded continued-driving standard, because continued-driving standard was not always or usually less stringent than full-time driving standard, so that city could reasonably interpret continued-driving standard as incorporating the full-time driving standard.

[3] **Declaratory Judgment** Appeal and Error

Trial court's technical or procedural error in failing to enter one of its rulings as a declaratory judgment did not require reversal in the declaratory judgment action; the appellate court could effectively cure the error by making the declaration of rights in the appellate opinion. West's Ann.Cal.C.C.P. § 1060.

[4] **Declaratory Judgment** Licenses and Taxes

Questions regarding extent and limits of city taxi commission's power to adopt and apply a standard for compliance with city ordinance's continued-driving requirement for permit to operate a taxicab business did not present actual controversy that could be resolved by declaratory judgment; permit holders were improperly seeking an advisory opinion, and while such opinion on commission's power to adopt a driving standard might assist the commission in making future policy decisions, it would not resolve an existing controversy between permit holders and city. West's Ann.Cal.C.C.P. § 1060.

[5] **Declaratory Judgment** Licenses and Taxes

Allegation of holders of permits to operate taxicab businesses, that city police department's notice of change in its continued-driving requirement for permit holders "failed to convey to individual permittees the fact that the [department] had changed its [internal] interpretation" of the requirement, did not present an actual controversy which could be resolved by declaratory judgment; holders' allegation, which was stated in very general terms, did not specify whether permit holders were presenting questions regarding administrative procedure, the actual notice received by permit holders, or prejudice to permit holders in context of particular administrative action, and court could not determine whether or how the notice issue might affect permit holders' interests in opposing alleged written admonishments issued by police. department. West's Ann.Cal.C.C.P. § 1060.

[6] **Automobiles** Eligibility for and vehicles subject to license or certificate

City's administrative rule reasonably construed "business day" as meaning calendar day, for purposes of city ordinance imposing full-time driving requirement on holders of permits to operate taxicab businesses and requiring a permit applicant to declare an intent to drive for at least four hours during any 24-hour period on at least 75 percent of business days during calendar year; a contrary interpretation allowing shifts of eight hours or more spanning two calendar days to be counted as two four-hour shifts would undermine full-time driver requirement by effectively cutting it in half and would introduce elements of uncertainty and complexity.

[7] **Automobiles** Eligibility for and vehicles subject to license or certificate

City taxi commission's administrative rule disallowing a shift actually driven from being counted towards police code's requirement that holder of permit to operate taxicab business must be full-time taxicab driver, if permit holder's waybill was not accurate and complete, was reasonable and consistent with the police code's full-time driver requirement.

[8] **Automobiles** Eligibility for and vehicles subject to license or certificate

City taxi commission's administrative rule requiring a holder of a permit to operate a taxicab business to drive a designated spare taxicab when holder's taxicab was out of service, in order for holder to receive credit toward police code's full-time driving requirement for holders, was reasonable and consistent with the police code's full-time driver requirement.

[9] **Automobiles** Eligibility for and vehicles subject to license or certificate

City taxi commission's administrative rule requiring that, if a holder of permit to operate taxicab business drives eight-hour shift composed of two four-hour components driven before and after midnight in separate calendar days, holder must return to garage after first four-hour component to return one waybill and take out another for next four-hour component, was reasonable and consistent with the police code's full-time driver requirement for permit holders.

Opinion

SWAGER, J.

***1** A nonprofit corporation, San Francisco Permitholders and Drivers Association, Inc. (Permitholders Association), and two individual members of the corporation, Hubert Fontaine and James Matheson, appeal a judgment dismissing a suit for declaratory judgment and injunctive relief against the City and County of San Francisco and the Taxi Commission of the City and County of San Francisco (hereafter collectively referred to as the City), which was entered on an order dismissing the City's demurrer without leave to amend. We reverse the order sustaining the demurrer to the first, second and fifth causes of action and otherwise affirm.

PROCEDURAL BACKGROUND

As alleged in the complaint, Hubert Fontaine worked as a taxicab driver and dispatcher in the city for almost 20 years before receiving a permit to operate a taxicab business in San Francisco in February 1997. Shortly after receiving the permit, he served as a member of the board of directors of the De Soto Cab Cooperative Company and then served as president of the company from March 1998 until September 1999. In March 2000, Fontaine was formally admonished by the San Francisco Police Department Taxicab Detail for failure to satisfy a permit requirement that he be a full-time driver. Specifically, he "was admonished for failure to drive 185 shifts during 1999 despite the fact that he drove 126 shifts of four hours or more while also working as a De Soto dispatcher and serving as president and a director of De Soto." The admonishment warned that his failure to satisfy the full-time driver requirement "would constitute adverse evidence in any subsequent proceeding concerning his permit before the Taxi Commission...."

James Matheson, age 72 years, worked as a taxicab driver in San Francisco for 26 years before receiving a permit to operate a taxicab business in 1990. As a result of emphysema, Matheson could drive only "about 70 shifts during 1999, and only about 40 shifts during the year 2000." The complaint alleges that, in March 2000, he also was admonished by the San Francisco Police Department Taxicab Detail "and threatened with revocation of his permit to operate a taxicab business due to his alleged failure to satisfy the purported 'driving requirement.' " The admonishment similarly stated that his failure to satisfy the driving requirement would be used "as adverse evidence in any subsequent proceeding concerning his permit before the Taxi Commission."

Both Fontaine and Matheson are members of the Permitholders Association. In a complaint filed November 28, 2000, they joined with the Permitholders Association in challenging the existence and application of a requirement that permit holders be full-time drivers. The complaint alleges six causes of action for declaratory and injunctive relief that may be divided into three groups: (1) the first and fifth causes of action (the Proposition K causes of action) challenge the City's interpretation of Proposition K, an initiative ordinance enacted in 1978, as imposing a "driving requirement" on holders of taxicab permits, (2) the sixth cause of action (the Police Code cause of action) challenges the City's reliance on section 1090, subdivision (a)(i), and section 1076, subdivision (o), of the Police Code of the City and County of San Francisco, and (3) the second, third and fourth causes of action (the administrative enforcement causes of action) challenge specific administrative interpretations and enforcement actions relating to the full-time driver requirement.

***2** The City filed a demurrer to the complaint asserting that each cause of action failed to state facts sufficient to constitute a cause of action. The trial court sustained the demurrer without leave to amend with respect to all six causes of action and on July 12, 2001, filed a judgment dismissing the complaint. Appellants filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

We review the judgment according to well settled principles. "We treat the demurrer as admitting all material facts properly pleaded.... Facts that may be implied or inferred from those expressly alleged are also taken as true." (*Dunn–Edwards Corp. v. South Coast Air Quality Management Dist.* (1993) 19 Cal.App.4th 536, 542, 24 Cal.Rptr.2d 99.) "When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Our review also requires us to interpret the meaning of the relevant provisions of Proposition K and the regulations promulgated there under. In doing so we apply a fundamental rule of statutory construction: "[A] statute 'must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity.' [Citations.]" (*Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 299, 91 Cal.Rptr.2d 479.)

B. Proposition K Causes of Action

1. Legislative Background

In 1978, the San Francisco Board of Supervisors placed on the ballot two competing measures to address the perceived evil of profiteering by taxicab companies and favored individuals in the sale of taxicab permits. The voters adopted Proposition K, the more far-reaching of the two measures. The voter pamphlet [1] described the measure as follows: "Shall taxicab permits be issued only to individual cab operators and shall the private sale of rights in taxicab permits be prohibited?" [2] The "Analysis" of the measure explained that it would require existing permit holders to exchange their permits within 60 days for re-issued permits that could not "be bought or sold privately." (S.F. Voter Information Pamp., *supra,* analysis of Prop. K by ballot simplification committee, p. 36.) After this 60–day period, "new permits would only be issued to individuals, not to companies." (*Ibid.*) In issuing these new permits, the City would give preference "to anyone who has been a taxicab driver for one straight year within the past three years." Summing up this explanation, the pamphlet stated: "If you vote yes, you do not want taxicab permits to be sold on the open market and you want to phase out ownership by companies." (*Ibid.*)

1 San Francisco Voter Information Pamphlet, Primary Election (June 6, 1978) text of Proposition K, pages 53 and 54.

2 San Francisco Voter Information Pamphlet, Primary Election, *supra,* page 36.

***3** The argument in favor of Proposition K described it as consumer legislation that would give "the voter ... a chance to say whether the cab business should be opened up to stop favored taxicab companies and individuals from buying and selling cab permits for profit and practicing unfair competition." (S.F. Voter Information Pamp., *supra,* argument in favor of Prop. K, p. 37.) The argument concluded: "STOP THE PROFITEERING—VOTE 'YES' ON PROPOSITION 'K.' " (*Ibid.*)

The present litigation arises from the requirement that new permits be issued in the future to individuals actively engaged in the taxicab business. We do not need to discuss other aspects of the measure, such as the 60–day period for re-issuance of existing permits or the prohibition on private sale of permits.

Section 1, subdivision (b) of the San Francisco Administrative Code vests in the Chief of Police the "responsibility of establishing regulations to assure prompt, courteous and honest service to the riding public." Subdivision (d) thereof requires the Police Commission to "issue a sufficient number of permits to assure adequate taxicab service throughout the City and County of San Francisco."

The provisions of Proposition K that are pertinent to the resolution of the issues before us are found in sections 2, 3, and 4. (S.F. Voter Information Pamphlet, Primary Election, *supra,* pp. 53–54.) Section 2 regulates applications for new permits and provides in subdivision (b): "No permit shall be issued unless the person applying for the permit shall declare under penalty of perjury his or her intention actively and personally to engage as permittee-driver under any permit issued to him or her for at least four (4) hours during any twenty-four (24) hour period on at least seventy-five (75%) of the business days during the calendar year. No more than one permit shall be issued to any one person." (S.F. Voter Information Pamphlet, Primary Election, *supra,* p. 53.) Section 3 sets forth several criteria for issuance of new

permits; the last of these criteria incorporates by reference section 2, subdivision (b): "(d) The applicant will be a full-time driver, within the meaning of Section 2(b) of this Ordinance, of the taxicab or other motor vehicle for hire." (S.F. Voter Information Pamphlet, Primary Election, *supra,* pp. 53–54.)

Proposition K, section 4 imposes a requirement that permit holders actively operate a taxicab under their permit. Subdivision (a) provides in pertinent part: "All permittees ... shall regularly and daily operate their taxicab or other motor vehicle for hire business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab or motor vehicle for hire service. [¶] Upon abandonment of such business for a period of 10 consecutive days by a permittee or operator, the Police Commission shall, after five days' written notice to the permittee or operator, revoke the permit or permits of such permittee or operator; provided, however, that the Chief of Police ... may on written application grant to the holder of any permit hereunder permission to suspend operation pursuant to such permit for a period not to exceed 90 calendar days in any one 12 month period in case of sickness, death, or other similar hardship." Subdivision (a) also provides that "All such permits and all rights granted under them may be rescinded and ordered revoked by the Police Commission for good cause." (S.F. Voter Information Pamphlet, Primary Election, *supra,* p. 54.)

2. The First and Fifth Causes of Action

***4** **[1]** The first cause of action alleges that an actual controversy has arisen between the City and appellants regarding a "driving requirement" imposed by Proposition K on taxi permit holders. It is alleged that the City contends "that Proposition K requires that each permittee actively and personally drive a taxicab operated by the permitted business for at least 4 hours per day on 75 percent of the business days in each calendar year that the permit is held." The City allegedly regards this specific quantitative "driving requirement" as remaining in effect throughout the lifetime of the permittee without regard for any changed circumstances that may prevent the permittee from meeting it and claims the right to revoke a taxicab permit for failure to satisfy the requirement, even though the permittee "maintains the permitted taxicab business in continuous operation as required by Section 4 of Proposition K."

The cause of action effectively asks for two declarations: first, that Proposition K should not be interpreted, or applied, to impose a " 'driving requirement' for the life of the permittee regardless of changed circumstances;" and, secondly, that the City may not revoke, or threaten to revoke, a taxicab permit for failure "to satisfy the Driving Requirement due to changed circumstances so long as the permittee maintains the permitted taxicab business in continuous operation ... as provided by Section 4 of Proposition K." We see these requests as presenting distinct issues. The first calls for a determination of whether Proposition K imposes a full-time driving requirement even if the permit holder's ability to drive full time changes. The second calls for a determination of the scope and extent of the full-time driving requirement.

The trial court's order sustaining the City's demurrer states that this cause of action cannot give appellants a right to declaratory or injunctive relief "because the full-time driving requirement imposed by Proposition K ... is not subject to any exception for taxi permit holders who, due to 'changed circumstances,' have become unable to continue to drive full-time," and, accordingly, the existence of changed circumstances does not affect the City's power to admonish, discipline, or revoke the permit of a permit holder. In effect, the order denies the first requested declaration regarding changed circumstances but does not address the second requested declaration relating to interpretation of section 4 of Proposition K.

"The interpretation of ordinances and statutes are proper matters for declaratory relief." (*Walker v. County of Los Angeles* (1961) 55 Cal.2d 626, 637, 12 Cal.Rptr. 671, 361 P.2d 247.) "It is the general rule that in an action for declaratory relief the complaint is sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties ... and requests that the rights and duties be adjudged. (Code Civ. Proc., § 1060.) If these requirements are met, the court must declare the rights of the parties whether or not the facts alleged establish that the plaintiff is entitled to a favorable declaration." (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 549–550, 305 P.2d 20; see also *City of Tiburon v. Northwestern Pac. R.R. Co.* (1970) 4 Cal.App.3d 160, 170; , 84 Cal.Rptr. 469 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading § 831, p. 288.) There can be no question that the first cause of action alleged an actual controversy and requested an adjudication of rights and duties on a proper subject for declaratory relief.

***5** As appellants argue, the relevant provisions in sections 2 and 3 relate only to the intent of the applicant at the time of making the application. Subdivision (b) of section 2 calls for a

declaration under oath of an intent to meet a very specific and stringent standard of full-time operation of the taxicab. (S.F. Voter Information Pamphlet, Primary Election, *supra,* p. 53.) Subdivision (d) of section 3 requires a finding on the basis of application documents that the applicant will comply with his or her declared intent. Though it relates to probable future conduct, the finding is made in connection with the initial issuance of the permit and relates only to this administrative action. (*Id.,* at pp. 53–54, 84 Cal.Rptr. 469.)

The requirement of continuous operation of a taxicab under a permit is found in section 4, subdivision (a). Unlike section 3, subdivision (d), the language of section 4, subdivision (a), contains no cross-reference to the standard of section 2, subdivision (b), but instead requires in general terms that the permit holders "shall regularly and daily operate their taxicab ... during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab...." (S.F. Voter Information Pamphlet, Primary Election, *supra,* p. 54.)

Appellants argue that this requirement of continuous operation of a taxicab is tangential to the central objectives of Proposition K; it does not directly relate to the evil of profiteering or the private sale of permits but serves only to regulate an alternate scheme of licensing individual taxicab drivers that Proposition K proposed to encourage. In light of the secondary importance of these provisions to the legislative objective, appellants urge adoption of a flexible interpretation of the continued-driving requirement of Proposition K. Such an interpretation would allow consideration of a permit holder's leadership position in a taxicab cooperative and would not preclude some accommodation for a physical disability.

The actual language of section 4, subdivision (a), however, militates against the policy of flexibility that appellants urge. The section authorizes revocation of a permit upon abandonment of the taxicab business for no more than 10 consecutive days. In the event of sickness or other hardship, it authorizes the police department to grant permission for a permit holder to suspend operation for only 90 calendar days and only upon written application and following a thorough investigation. These provisions reflect a consistent theme in Proposition K to meet the public demand for taxi service by assuring "prompt, courteous and honest service to the riding public...." (S.F.Admin.Code, appen .6, § 1, subd. (b), p. 23.)

We see no error in the trial court's ruling to the extent that it rejected the first requested declaration, i.e., the declaration regarding changed circumstances, but the second requested declaration relating to interpretation of section 4 of Proposition K presents distinct issues. As discussed later in this opinion, we consider that the standard for continuous operation under the permit in section 4 is consistent with local legislation, regulations, and administrative interpretations that reflect the quantitative driving standard of section 2, subdivision (b). Nevertheless, appellants may seek a declaration that the general standard in section 4 does not necessarily mirror in all cases the quantitative driving standard of sections 2 and 3. More specifically, they may request a declaration that the standard for continuous operation in section 4 would allow the enactment of local legislation or regulations, or the exercise of discretion under existing legislation and regulations, so as to make some limited allowance, consistent with the strong policy of Proposition K favoring full-time operation of taxicabs by permit holders, for a permit holder's leadership position in a taxicab cooperative or physical disability.

***6** We therefore conclude that the trial court erred in denying, without leave to amend, the second requested declaration in the first cause of action. Our analysis of the first cause of action is also dispositive of the fifth cause of action.

C. The Police Code Cause of Action

[2] The sixth cause of action seeks a declaration that section 1090, subdivision (a), of the San Francisco Police Code is unlawful and void because it conflicts with Proposition K. The provision, enacted in 1988, gives the Police Commission discretionary authority to revoke a taxicab permit "for good cause after a noticed hearing." Good cause is defined to include a series of considerations, the first of which is that "[t]he permittee ceased to be a full-time driver." The term "full-time driver" is in turn defined by section 1076, subdivision (o), to incorporate the standard of section 2, subdivision (b) of Proposition K. Subdivision (o) provides: " 'Full-time driver' is hereby defined to mean any driver actually engaged in the mechanical operation and having physical charge or custody of a motor vehicle for hire which is available for hire or actually hired for at least four hours during any 24–hour period on at least 75 percent of the business days during the calendar year."

Sections 1090 and 1076 are clearly within the City's legislative power to implement the provisions of Proposition K. The last sentence of section 4, subdivision (a), of the proposition authorizes the Police Commission to revoke taxicab permits "for good cause." The City retains

legislative power to interpret the proposition by enumerating considerations constituting good cause. (*Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1021, 207 Cal.Rptr. 78; *Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 622, 194 Cal.Rptr. 294.)

We see no conflict between the language of section 1090 and Proposition K. In light of the importance given to the full-time driving standard of section 2, subdivision (b), it is reasonable to regard the failure to meet this standard as providing grounds for the discretionary revocation of a taxicab permit. We note that Proposition K not only requires an applicant to state under oath an intent to comply with this standard but also requires the Police Commission to make a finding, as a condition for issuing a permit, that the applicant will in fact comply with the standard. The use of this specific standard of section 2, subdivision (b) as good cause for revocation of a permit does not necessarily conflict with the more generally worded continued-driving standard of section 4. As discussed above, although section 4, subdivision (a), does not incorporate the exact language of section 2, subdivision (b), our analysis does not indicate that the standard set forth in section 4, subdivision (a) is always or usually less stringent than the standard of section 2, subdivision (b). The City may reasonably construe section 4 as incorporating the identical standard as section 2, subdivision (b), in a broad range of cases.

***7** **[3]** In sustaining the demurrer to the sixth cause of action, the trial court appropriately ruled: "plaintiffs' sixth cause of action cannot state any cause of action against defendants because Section 1090 of the San Francisco Police Code is lawful and valid, and does not conflict with Proposition K on its face or as applied." We regard the trial court's failure to enter this ruling as a declaratory judgment as a technical procedural irregularity that is effectively cured by our opinion here. As stated in *Newby v. Alto Riviera Apartments* (1976) 60 Cal.App.3d 288, 304, 131 Cal.Rptr. 547, disapproved on other grounds in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 740–741, footnote 9, 180 Cal.Rptr. 496, 640 P.2d 115, "[e]ven though the failure to declare appellant's rights was erroneous, reversal would be an idle act. [Citations.] The appellate opinion is, in effect, a declaration of the rights of the parties." (See 5 Witkin, Cal. Procedure, *supra,* § 832, p. 290.) Accordingly, we affirm the order sustaining the demurrer to the sixth cause of action.

D. The Enforcement Causes of Action

1. The Second Cause of Action

[4] **[5]** The second cause of action recites a history of administrative interpretations of the continued-driving requirement by the city attorney and the Taxicab Detail of the San Francisco Police Department, including an 800–hour–per–year driving rule that was allegedly the subject of successive and inconsistent opinions of the city attorney to the Mayor's Taxi Task Force and the Taxi Commission. It further alleges that an interpretation announced by the police department on January 1, 1998, requiring a permit holder to drive at least 185 separate shifts of at least four hours per day each calendar year was inadequately communicated to permit holders. The cause of action seeks two distinct declarations. First, it requests a declaration "setting forth the extent and limits of the Taxi Commission's power to adopt and apply a standard for compliance with any driving requirement that may exist," and, more specifically, the Commission's power to adopt an 800–hour–per–year driving requirement. Secondly, it seeks a declaration that the City "failed to give adequate notice of their interpretation of the driving requirement during 1998 and 1999."

The trial court sustained the demurrer to this cause of action on the ground that it failed to allege a proper subject for declaratory relief and that the issue of notice of the driving requirement in 1998 and 1999 was barred by the doctrine of exhaustion of administrative remedies. We reach separate conclusions with respect to the two requested declarations. With respect to the first requested declaration, we hold that the court properly ruled that the cause of action did not state a proper subject for declaratory relief. With respect to the second requested declaration, we conclude that the cause of action did not allege an actual controversy but that the trial court erred in denying leave to amend.

"Section 1060 of the Code of Civil Procedure provides that 'Any person ... who desires a declaration of his rights or duties with respect to another, or in respect to ... property ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action in the superior court for a declaration of his rights and duties in the premises.' The 'actual controversy' referred to in this statute is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular and hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117, 109 Cal.Rptr.

799, 514 P.2d 111; see also *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1722, 45 Cal.Rptr.2d 752; *BKHN, Inc. v. Department of Health Services* (1992) 3 Cal.App.4th 301, 308, 4 Cal.Rptr.2d 188; *Newland v. Kizer* (1989) 209 Cal.App.3d 647, 657, 257 Cal.Rptr. 450.)

***8** Under this definition of an actual controversy, we consider that the trial court properly sustained the demurrer without leave to amend insofar as it related to the first requested declaration. A declaration interpreting the Taxi Commission's power to adopt a driving requirement represents a classic form of advisory opinion of the sort that should be given by legal counsel rather than the courts. Such an opinion on the Commission's power to adopt a driving standard might assist the Commission in making future policy decisions but it would not resolve an existing controversy between appellants and the City. The related request for a declaration regarding an 800–hour–per–year driving requirement might once have resolved an actual controversy, but, since the City is not relying on such a standard, a declaration on the validity of the standard would not adjudicate any existing dispute.

The alleged inadequate notice given by the police department regarding a 1998 change in its "driving requirement" is stated in very general terms that again fail to allege an actual controversy between the City and appellants. The significance of a defect in notice may involve questions of administrative procedure, actual notice received by the plaintiffs, and prejudice to the plaintiffs in the context of a particular administrative action. The cause of action alleges only that the notice "failed to convey to individual permittees the fact that the Taxi Detail had changed its [internal] interpretation of the purported Driving Requirement." On this allegation, we cannot determine whether, or how, the issue of notice may affect the appellants' interests in opposing the alleged written admonishments issued by the police department. In short, we do not know the precise nature of an actual controversy, if any, that may exist between appellants and the City pertaining to the adequacy of the notice.

Nevertheless, an order sustaining a demurrer without leave to amend " 'ordinarily constitutes an abuse of discretion, if there is a reasonable possibility that the defect can be cured by amendment.' [Citation.]" (*Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1304, 243 Cal.Rptr. 390; *MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536, 542, 343 P.2d 36; *Smith v. County of Kern* (1993) 20 Cal.App.4th 1826, 1830, 25 Cal.Rptr.2d 716.) We find nothing on the face of the complaint that precludes the possibility that appellants may be able to amend the complaint to state an actual controversy. Therefore, we conclude that the trial court erred in denying leave to amend.

2. The Third Cause of Action

[6] The third cause of action addresses an administrative practice based on an interpretation of Proposition K, section 2, subdivision (b). As noted earlier, the subdivision requires the permit applicant to declare an intent to engage in driving "for at least four (4) hours during any twenty-four (24) hour period on at least seventy-five (75%) percent of the business days during the calendar year." As the City construes this language, a permit holder must drive four hours on a particular calendar day to get credit for driving a shift on one business day; he or she does not receive additional credit by driving a shift of eight or more hours on the calendar day. Nevertheless, a shift of eight or more hours that spans two calendar days, with at least four hours driven before midnight and four hours after midnight, does qualify as a shift on two business days. For their part, appellants advance an alternative interpretation: "driving for eight or more consecutive hours, centered within any 48–hour period, constitutes two separate 4–hour shifts during two separate 24–hour periods for purposes of satisfying the purported driving requirement."

***9** The trial court sustained the City's demurrer to the cause of action on the ground that "the 'calendar day' rule challenged therein is a reasonable and valid regulation implementing and/or allowing enforcement of Proposition K." The rule is alleged, however, to be no more than an administrative interpretation on which the City customarily bases its enforcement practices. The interpretation may be sustained only if it is consistent with the language of Proposition K.

We see no merit in appellant's alternative interpretation. By allowing permit holders to manipulate the calculation of a 24–hour period to produce the maximum number of business days driven during a calendar year, the rule would tend to introduce an element of uncertainty and complexity that is unlikely to be consistent with the legislative intent of Proposition K. More fundamentally, the alternative interpretation would undermine the "full-time driver" requirement of section 2, subdivision (b), section 3, subdivision (d), and section 4,

subdivision (a). We have concluded that section 4, subdivision (a), establishes a distinct standard from that applying to the declaration and assessment of the applicant's intent in section 2, subdivision (b) and section 3, subdivision (d), but it is not necessarily a less stringent one. Police Code section 1090 properly implements Proposition K by treating a failure to comply with the standard of sections 2 and 3 as good cause for revocation of a permit under section 4. Appellant's alternative interpretation would effectively cut in half the definition of full-time driver in sections 2 and 3 by allowing every eight-hour shift to count as two shifts, thereby undermining the legislative intent to limit the issuance of permits to those drivers who "regularly and daily" operate a taxicab.

In our view, the City has adopted a reasonable interpretation of the somewhat awkwardly worded phrase in Proposition K. Under a familiar canon of statutory construction, "[w]ords used in a statute or constitutional provision should be given the meaning they bear in ordinary use." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) Though the meaning of the term "business day" may vary with business practices, it clearly refers to a calendar day in ordinary usage. The reference to "any 24–hour period *on* at least 75 percent of the *business days* during the calendar year" [emphasis added] refers to 24–hour periods "on" or within business days. Since business days are always calendar days, the statutory language may most reasonably be construed as referring to 24–hour periods within calendar days. We therefore hold that, in sustaining the demurrer to the third cause of action, the trial court properly ruled that the "calendar day" rule was "a reasonable and valid regulation implementating [*sic*] and/or allowing enforcement of Proposition K." Though appellants were entitled to a declaration to that effect, we affirm the order on the ground that this opinion will serve as the required declaration.

3. The Fourth Cause of Action

***10** **[7]** In the fourth cause of action, appellants challenge three administrative rules reflected in provisions of the San Francisco Police Code and San Francisco Taxicab/ Ramped Taxi Rules and Regulations (hereafter Commission regulations) issued there under. First, they object to "the disallowance of shifts actually driven in determining compliance with the purported 'driving requirement,' solely due to errors or incompleteness in a permittee-driver's waybill, notwithstanding that the permittee actually drove such shifts." Section 1138 of the Police Code requires taxicab drivers to "keep an accurate and legible waybill" that sets forth 14 specific items of information. Section 6, subdivision (C)(8), of the Commission regulations similarly provides: "Every Taxicab Driver shall use the waybill format as prescribed by the Taxicab Commission or the Commission's designee. The waybills shall be completed in indelible ink, and shall include the driver's signature at the commencement of the shift as well as the 'A' card number and total number of hours worked."

[8] Secondly, appellants object to the rule that a permit holder must drive a designated spare taxi when his or her taxi is out of service to receive credit toward the full-time driving requirement. Section 4, subdivision (A)(10), of the Commission regulations provides that, when complying with the full-time driving requirement, all permit holders must drive their own medallion number taxi unless it is out of service. Section 5 pertains to the use of a spare taxi when the assigned taxi is out of service; subdivision (D)(1) provides that "[a] taxicab vehicle operating as a spare may operate with a taxicab medallion borrowed from an out-of-service vehicle," and subdivision (D)(2) provides that "[a]ll taxicab vehicles operating as a spare must be registered and insured under the color scheme. [¶] a. Spare vehicles shall only be used to replace temporarily disabled regular [*sic*] assigned vehicles."

[9] Thirdly, appellants attack the requirement that, where permit holders drive an eight-hour shift composed of 2 four-hour components driven before and after midnight in separate calendar days, they must return to the garage after the first four-hour component to return one waybill and take out another for the next four-hour component. The requirement arises from the general requirement that all shifts must begin and end at the taxicab company to count toward fulfillment of the full-time driving requirement. Section 4, subdivision (A)(9) of the Commission regulations provides in pertinent part: "Medallion Holders shall ensure that the taxicab operating under the medallion issued to them begins and ends all shifts at their color scheme's place of business.... Medallion Holders shall ensure that all waybills, reports and found property are turned in at the taxi company premises at the conclusion of each shift." Section 6, subdivision (C)(4), similarly provides: "Every Taxicab Driver is to start and end the shift at the color scheme's principal place of business...."

***11** The regulations at issue were promulgated by the Taxi Commission under the authority of San Francisco Police Code section 1077, which confers on the agency authority to "adopt such rules and regulations to effect the purposes of

this Article as are not in conflict therewith." The Police Code article referenced in section 1077 includes the provisions creating a full-time driver requirement for permit holders discussed earlier, i.e., section 1076, subdivision (o), and section 1090, subdivision (a).

"The scope of our review of an administrative agency's regulations is limited: we consider whether the challenged provisions are consistent and not in conflict with the enabling statute and reasonably necessary to effectuate its purpose. [Citation.] As a general proposition, administrative regulations are said to be 'shielded by a presumption of regularity' [citation] and presumed to be '*reasonable and lawful.*' [Citation.] The party challenging such regulations has the burden of proving otherwise." (*Fox v. San Francisco Residential Rent etc. Bd.* (1985) 169 Cal.App.3d 651, 655, 215 Cal.Rptr. 565.) "An agency's interpretation of its own regulations is given great weight, and will be overturned (in the absence of any evidentiary dispute) only if arbitrary and capricious." (*Memorial Hospital–Ceres v. Belshé* (1998) 67 Cal.App.4th 233, 238, 78 Cal.Rptr.2d 824.)

Appellants contend that these rules are not authorized by Proposition K and are unreasonable, arbitrary and capricious. As discussed earlier, we consider that Police Code sections 1090, subdivision (a), and 1076, subdivision (o), are consistent with section 4, subdivision (a), of Proposition K. The Taxi Commission is explicitly authorized by section 1077 of the Police Code to issue regulations to clarify and implement other provisions of the Police Code. Moreover, each of the rules at issue resolves practical dilemmas in enforcement of the Police Code in an entirely reasonable manner. We find nothing on the face of the complaint that might reasonably support a declaration that the rules are unreasonable or arbitrary, and we see no reasonable possibility that the complaint could be amended to state a basis for such a declaration. Accordingly, we affirm the order sustaining the demurrer to the fourth cause of action with the proviso that this opinion will serve as the requested declaration.

We reverse the judgment dismissing the complaint on the ground that the trial court erred in sustaining the demurrer to the first, second and fifth causes of action. In all other respects the judgment is affirmed and the matter is remanded for further proceedings consistent with this opinion.

Each party shall bear their own costs on appeal.

We concur: MARCHIANO, P.J., MARGULIES, J.

All Citations

Not Reported in Cal.Rptr.2d, 2002 WL 1485354

EXHIBIT B

TO

SFMTA TAXI DIVISION'S ANSWERING BRIEF

2008 WL 2632101
Only the Westlaw citation is currently available.
United States District Court,
N.D. California.

William SLONE and Michael Merrithew, Plaintiff,
v.
TAXI COMMISSION, City and County of San Francisco, et al., Defendants.

No. C 07–03335 JSW.
|
June 30, 2008.

Attorneys and Law Firms

Joseph M. Breall, Breall & Breall, San Francisco, Elliott Andrew Myles, Myles Law Firm, Inc., Oakland, CA, for Plaintiffs.

Vince Chhabria, Francesca Gessner, Wayne Kessler Snodgrass, Office of the City Attorney, San Francisco, CA, for Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT

JEFFREY S. WHITE, District Judge.

***1** Now before the Court is the motion for summary judgment filed by Defendants City and County of San Francisco and the Taxi Commission and the cross-motion for summary judgment filed by Plaintiffs William Slone and Michael Merrithew. Having carefully considered the parties' papers and the relevant legal authority, the Court hereby GRANTS Defendants' motion for summary judgment and DENIES Plaintiffs' motion for summary judgment.

BACKGROUND

In 1978, the voters of San Francisco approved Proposition K, an initiative ordinance ("Ordinance" or "Proposition") that provided that taxi permits ("medallions") are public property owned by the City and County of San Francisco and licensed to individuals. The Ordinance provides that no permit will be issued unless the applicant declare his or her intention personally to engage as the taxi driver at least four hours during any 24 hour period or at least 75 percent of the business days during the calendar year. S.F. Admin. Code Appx. 6 § 2(b). [1]

1 The Ordinance is attached to Defendants' Request for Judicial Notice ("Request") in support of their motion for summary judgment. The Court GRANTS the Defendants' Request pursuant to Federal Rule of Evidence 201(b).

The Ordinance further provides that "the applicant will be a fulltime driver, within the meaning of Section 2(b) of this Ordinance, of the taxicab or other motor vehicle for hire." *Id.* at § 3(d). Further, the Ordinance states that all permittees "shall regularly and daily operate their taxicab or other motor vehicle for hire business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab or motor vehicle for hire service." *Id.* at § 4(a).

From the passage of Proposition K in 1978 until 1999, the Police Commission's Taxi Detail was responsible for monitoring compliance with the driving requirement. (*See* Declaration of Paul Gillespie ("Gillespie Decl.") at ¶ 5.) In November 1998, the San Francisco voters passed a ballot measure transferring authority for taxi regulation from the Police Commission to the Taxi Commission. *See id.* The Proposition was later codified by the Board of Supervisors in several provisions of the San Francisco Police Code. At the time of its passage, the only authority for modification of the Proposition's driving requirement was the 90–day hardship waiver provided in the text of the Proposition and codified in the Police Code. S.F. Admin. Code Appx. 6 § 4(a); S.F. Police Code § 1096(c); Gillespie Decl. at ¶ 6. A permit holder who abandons his business for 10 consecutive days may have his permit revoked, but can get permission to "suspend operation pursuant to such permit" for up to 90 days each calendar year "in case of sickness, death, or similar hardship." *Id.* After the passage of the Americans With Disabilities Act, 42 U.S.C. § 12132 ("ADA"), further short-term exemptions were enacted including the modification of the driving requirement for up to 120 days in one year and suspension of the requirement for up to one year in five for individuals with catastrophic recoverable illnesses. (Defendants' Request, Ex. N, Resolution No.2008–28.)

***2** Title II of the ADA requires the City to provide "reasonable modifications" to make its medallion program accessible to disabled individuals, unless such modifications would "fundamentally alter" the nature of the program. *See* 28 C.F.R. § 35.130(b)(7); *see also* *Tennessee v. Lane,* 541 U.S. 509, 531–32, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (holding that the duty to provide reasonable accommodation does not extend to waiving or compromising an essential eligibility requirement of the program).

Plaintiff William Slone is disabled due to wasting lung disease that requires him to be constantly connected to oxygen and therefore unable to operate his taxicab vehicle personally. (Complaint at ¶ 7.) According to his submissions before the Taxi Commission, Mr. Slone's condition is permanent. (Declaration of Heidi Machen ("Machen Decl."), Ex. A at 2, Ex. B at 1.) Plaintiff Michael Merrithew is physically disabled and unable to operate his taxicab personally. (Complaint at ¶ 8.) According to his submissions, Mr. Merrithew represented that his disability was expected to last one year. (Machen Decl., Ex. E at 2.)

Plaintiffs seek to represent a class of over one hundred and fifty individuals who have made applications for ADA accommodation before Defendants to modify or waive the enforcement of San Francisco Police Code Section 1081(f) "Full–Time Driving Requirement" and Section 1090(a)(i) "revocation of Permit" based solely upon each Plaintiff's disability and only during the period of each Plaintiff's disability, subject to annual review, while concurrently requiring each Plaintiff to comply with all other sections of the Police Code, including the "continuous operation" requirement of arranging for the daily operation of a taxicab under Police Code Section 1096(a). (Complaint at ¶¶ 9, 11.) Plaintiffs contend the lawsuit is necessary to "obtain a legal determination requiring Defendants to comply with the ADA by providing an accommodation to class members, relieving them of the 'full-time driver' provisions of the Police Code requiring them to continue to comply with the continuous operations requirement of the Police Code during such time as they are disabled and until their disability have medically resolved." (*Id.* at ¶ 16.) Plaintiffs contends that the City should "modify or waive" the driving requirement for disabled drivers, "subject to annual review," "until their disabilities have medically resolved." (*Id.* at ¶¶ 11, 16, 87, 88.)

On February 15, 2008, Defendants moved for summary judgment on the ground that the ADA does not require the City to exempt disabled individuals from its statutory, voter-mandated requirement that taxi medallion holders personally drive their taxicabs in order to hold a medallion. On February 29, 2008, Plaintiffs opposed the City's motion and cross-moved for summary judgment on the grounds that a permit holder who becomes disabled after receipt of the permit, can still satisfy the fundamental nature of the Ordinance by arranging for the regular and daily operation of his or her taxicab, even though he or she cannot drive the taxi personally.

***3** The Court will address additional specific facts as required in the analysis.

ANALYSIS

A. Legal Standard on Motion for Summary Judgment. A court may grant summary judgment as to all or a part of a party's claims. Fed.R.Civ.P. 56(a). Summary judgment is proper when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248–49, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is "material" if the fact may affect the outcome of the case. *Id.* at 248. "In considering a motion for summary judgment, the court may not weigh the evidence or make credibility determinations, and is required to draw all inferences in a light most favorable to the non-moving party." *Freeman v. Arpaio,* 125 F.3d 732, 735 (9th Cir.1997).

A principal purpose of the summary judgment procedure is to identify and dispose of factually unsupported claims. *Celotex Corp. v. Cattrett,* 477 U.S. 317, 323–24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at trial, it must affirmatively

demonstrate that no reasonable trier of fact could find other than for the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party must go beyond the pleadings and by its own evidence "set forth specific facts showing that there is a genuine issue for trial ." Fed.R.Civ.P. 56(e). The non-moving party must "identify with reasonable particularity the evidence that precludes summary judgment." *Keenan v. Allan,* 91 F.3d 1275, 1279 (9th Cir.1996) (quoting *Richards v. Combined Ins. Co.,* 55 F.3d 247, 251 (7th Cir.1995)) (stating that it is not a district court's task to "scour the record in search of a genuine issue of triable fact"). If the non-moving party fails to make this showing, the moving party is entitled to judgment as a matter of law. *Celotex,* 477 U.S. at 323.

B. Principles of Interpretation.

Proposition K was a voter-approved ordinance initiative passed in 1978. Federal courts analyzing local ballot initiatives construe the provisions using rules of construction employed by state courts. *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 285 F.3d 1236, 1243 (9th Cir.2002). The Supreme Court of California has held that "ordinary principles of interpretation" govern the interpretation of voter initiatives. *San Francisco Taxpayers Association v. Board of Supervisors of CCSF,* 2 Cal.4th 571, 577, 7 Cal.Rptr.2d 245, 828 P.2d 147 (1992). First, the Court must address the "statutory language, giving the words their ordinary meaning. If the statutory language is not ambiguous, then the plain meaning of the language governs. If, however, the statutory language lacks clarity, we may resort to extrinsic sources, including the analyses and argument contained in the official ballot pamphlet, and the ostensible objects to be achieved." *People v. Lopez,* 34 Cal.4th 1002, 1006, 22 Cal.Rptr.3d 869, 103 P.3d 270 (2005) (internal citations omitted). In addition, the Court must consider that the "fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." *People v. Pieters,* 52 Cal.3d 894, 898, 276 Cal.Rptr. 918, 802 P.2d 420 (1991).

***4** Lastly, under the governing law of the City and County of San Francisco, "[n]o initiative or declaration of policy approved by the voters shall be subject to veto, or to amendment or repeal except by the voters, unless such initiative or declaration of policy shall otherwise provide." S.F. Charter § 14.101.

C. Specific Language of the Ordinance and Indicia of Voters' Intent.

The provisions of Proposition K that are relevant to the alleged full-time driving requirement are found in sections 2, 3 and 4 of the ordinance. Section 2 regulates applications for new permits and provides in subsection (b):

> No permit shall be issued unless the person applying for the permit shall declare under penalty of perjury his or her intention actively and personally to engage as permittee driver under any permit issued to him or her for at least four hours during any 24 hour period on at least 75 percent of the business days during the calendar year. No more than one permit shall be issued to any one person.

S.F. Admin. Code Appx. 6 § 2(b).

Section 3 sets forth several criteria for issuance of new permits, including an incorporation by reference to section 2(b), that "the applicant will be a full-time driver, within the meaning of Section 2(b) of this Ordinance, of the taxicab or other motor vehicle for hire." *Id.* at § 3(d).

Section 4 of the Proposition imposes a requirement that permit holders actively operate a taxicab under their permit. Subdivision (a) provides in pertinent part:

> All permittees ... shall regularly and daily operate their taxicab or other motor vehicle for hire business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab or motor vehicle for hire service. Upon abandonment of such business for a period of 10 consecutive days by a permittee or operator,

> the Police Commission shall, after five days' written notice to the permittee or operator, revoke the permit of permits of such permittee or operator; provided, however, that the Chief of Police ... may on written application grant to the holder of any permit hereunder permission to suspend operation pursuant to such permit for a period not to exceed 90 calendar days in any one 12 month period in case of sickness, death, or other similar hardship.

Id. at § 4(a). The same subsection provides that "All such permits and all rights granted under them may be rescinded and ordered revoked by the Police Commission for good cause." *Id.*

The plain meaning of sections 2 and 3 indicate that the Ordinance requires applicants to state under penalty of perjury that they intend to be full-time drivers and to issue a permit, that the applicant actually will be a full-time driver of the motor vehicle. Plaintiffs contend that the specific language of section 2 and 3 of the Ordinance refer merely to applicants for permits, not to the permit holders themselves. In other words, Plaintiffs contend, the full-time driver requirement only applies upon the application process, but not to the permittees. The Court finds this argument unpersuasive. The pledge to be a full-time driver after the applicant has received the permit would otherwise be an empty promise without abiding by the terms of the pledge. The pledge requires that the applicant will comply with his or her declared intent. Although such a promise relates to probable future conduct, the finding is made in connection with the issuance of the permit and therefore bears on the qualification of the expected permitholder.

***5** Next, Plaintiffs argue that only Section 4 applies to permit holders and the language of the Ordinance requires only that the permittee regularly and daily operate their taxicab, not that they regularly and daily drive their taxicab. Section 4, which clearly refers to permittees, requires that the permit holder "regularly and daily operate their taxicab or other motor vehicle for hire business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab or motor vehicle for hire service." S.F. Admin. Code Appx. 6 § 4(a). Although there is no question that the plain language of the Ordinance requires the holders of the permits to operate their taxicab full-time. However, Plaintiffs essentially argue that "operate" does not mean "drive." Plaintiffs contend that "operating" a taxicab includes other tasks such as paying annual fees, providing insurance, and performing routine record keeping.

Again, the Court finds this argument unconvincing. In the context of legislation which requires that the permit applicant pledge his or her commitment to be the full-time driver of the taxicab, it is clear from the plain meaning of the text that the requirement to operate the taxicab full-time was meant to reflect the full-time driving requirement. The peripheral tasks associated with maintaining a taxicab business do not amount to the "operation" of a taxicab.

However, even if the Court were to find there was any ambiguity in the text of the Ordinance, the probable intent of the voters in passing the initiative can be discerned from the "official statements made to the voters in connection with propositions of law they are requested to approve or reject." *Creighton v. City of Santa Monica,* 160 Cal.App.3d 1011, 1018, 207 Cal.Rptr. 78 (1984); *see also* *Amador Valley Joint Union High School Dist. v. State Board of Equalization,* 22 Cal.3d 208, 246, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978) (holding that ballot arguments "may be helpful in determining the probable meaning of uncertain language").

In the official ballot argument in favor of Proposition K, the proponents stated that the previously existing taxi permitting system hurt the "individual taxicab driver who wants to obtain a permit and be allowed to engage in the taxicab business himself." (Defendants' Request, Ex. C at 37.) The ballot argument goes on to explain: "Under this initiative ... those who own permits with the sole purpose of reselling them for an enormous profit could not do so. Then unused, the permits would return to the Police Commission where new permits would be issued to people who actually want to drive a taxicab." (*Id.*) It is clear that those in favor of passing the initiative intended that City-owned taxi medallions become accessible to working cab drivers, who are actually driving their own taxis, and not simply leasing out the permits for profit. It is clear from the ballot arguments that the intent of the original initiative, as understood by the voters who approved it, was to enable actual taxi cab drivers access to City-owned permits. Accordingly, both the plain language of

the initiative as well as the intent of the voters supports the requirement that the permittee be a full-time driver.

D. Driving Requirement is Essential Eligibility Requirement.

***6** Under Title II of the ADA, a public entity is required to make "reasonable modifications" in policies, practices, or procedures to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making such modifications would "fundamentally alter" the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7). Title II "does not require States to compromise their essential eligibility criteria for public programs. It requires only 'reasonable modifications' that would not fundamentally alter the nature of the service provided, and only when the individual is otherwise eligible for the service." *Tennessee v. Lane,* 541 U.S. at 531–32 (citing 42 U.S.C. § 12131(2)).

Plaintiffs contend that there is no full-time driving requirement in the Ordinance and therefore, waiving such a requirement does not constitute waiver of an essential eligibility requirement. On this basis, Plaintiffs contend that waiver of full-time driving would not fundamentally alter the City's taxi medallion program. However, the Court finds that the initiative, as well as its implementing legislation, does in fact contain the full-time driving requirement.

Each of the individual plaintiffs is "unable to operate his taxicab vehicle personally." (Complaint at ¶¶ 7, 8.) The record reveals that Mr. Slone's disability is permanent. (Machen Decl., Ex. A at 2, Ex. B at 1.) The record is unclear about the potential duration of Mr. Merrithew's disability at this time. (*Id.,* Ex. E at 2.) However, Plaintiffs request that the City "reliev [e] them of the 'full-time driver' provisions of the Police Code ... until their disabilities have medically resolved," "subject to annual review." (*See* Complaint at ¶¶ 11, 16.) However, because they cannot drive, there is no modification short of waiving the full-time driving requirement altogether that would allow Plaintiffs to satisfy the essential eligibility requirement.

The removal of one of the requirements, even annually, does not constitute a reasonable modification of the requirement. A program eligibility requirement is essential when the program's purposes could not be achieved without the it. *Alexander v. Choate,* 469 U.S. 287, 300–301, 105 S.Ct. 712, 83 L.Ed.2d 661 (1985). The text of the initiative requires that permit applicants make a pledge to be full-time drivers. S.F. Admin.Code Appx. 6 § 2(b). The ballot arguments specifically state that the clear intent of the Proposition was to enable actual cab drivers an opportunity to obtain a permit and be allowed to engage in the taxicab business himself. (*See* Defendants' Request for Judicial Notice, Ex. C at 37.) Based on the text of the initiative itself and the ballot arguments, the Court finds that the full-time driving requirement is an essential eligibility requirement. Plaintiffs' requested waiver of the requirement would fundamentally alter the nature of the service, program, or activity. *See* 28 C.F.R. § 35 .130(b)(7). Accordingly, the Court finds that the requested modification of the City's medallion program is not mandated by the ADA.

CONCLUSION

***7** For the foregoing reasons, the Court GRANTS Defendants' motion for summary judgment and DENIES Plaintiffs' motion for summary judgment. A separate judgment shall issue.

IT IS SO ORDERED.

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August 24, 2021

VIA EMAIL
boardofappeals@sfgov.org

Board of Appeals
City and County of San Francisco
49 South Van Ness, Suite 1475
San Francisco, CA 94103

Re: *George Horbal v. SF Municipal Transportation Agency (Medallion # 1303)*
Appeal of Matter

Dear Sir/Madam:

This will serve to advise the Board of Appeals that I authorize the City Attorney's Office of San Francisco to represent the San Francisco Municipal Transportation Agency before the Board of Appeal in the above referenced matter.

Very truly yours,

Kate Toran

Kate Toran
Director
Taxis, Access & Mobility Services Division
San Francisco Municipal Transportation Agency

PUBLIC COMMENT

Longaway, Alec (BOA)

From: Charles Rathbone <charles.rathbone@sonic.net>
Sent: Saturday, August 28, 2021 7:02 PM
To: BoardofAppeals (PAB)
Subject: Comment on Item 4 of the September 1 BOA hearing

Follow Up Flag: Follow up
Flag Status: Flagged

Following is the comment that I plan to make on Item 4 of the BOA September 1 hearing. If I am unable to deliver my message by phone, please pass it on to the commissioners. Thank you in advance.

This is a case of a Marine Corp veteran with a perfect record in the taxi industry whose permit is being revoked solely because he has become disabled. It is manifestly unfair, the harmful result of a poorly crafted ballot measure that was passed before the rights of disabled people were established.

Please, send this case back to the agency with instructions to clean up its rules. It's time to end the wildly swinging pendulum of taxi regulation. There were years of non-enforcement, followed by quarter-million dollar payouts for many, and now callous revocations for others.

Revoking Mr. Horbal's permit does nothing to benefit the public. The sole beneficiary will be the credit union which is one of the largest corporate medallion owners in the country, and whose hundreds of medallions will inch upwards in value as other medallions, such as Mr. Horbal's, are removed from the pool of potential sellers.

This revocation is an outrageous injustice that flies in the face of San Francisco values. It robs an impoverished individual while enriching a corporation and providing no benefit to the public.

Please vote to overturn the revocation of Mr. Horbal's permit.

Charles Rathbone
charles.rathbone@sonic.net
415-216-3265

Longaway, Alec (BOA)

From: Richard Powell <rgpowsu1@gmail.com>
Sent: Monday, August 30, 2021 12:39 AM
To: BoardofAppeals (PAB)
Subject: George Horbal medallion revocation hearing

Follow Up Flag: Follow up
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Dear Commissioners
Your decision about Mr. Horbal's medallion will affect all medallion owners who have spent their lives driving a taxi in San Francisco. All of us expected to use our business as a small retirement income when we have aged or become disabled as others before us have.

The SFMTA has stated that Prop K "contemplated" revocation of our medallions when we stop driving for any reason including old age or disability.

Prop K does not specify this-- nowhere does it say this--It says to swear the intention to drive x amount of hours or shifts -- which I and Mr. Horbal and other colleagues have done over the years--In my case 44 years of driving nonstop 40 to 50 hours a week with the last 25 years as a medallion owner. How can one person's effort and energy be dismissed by false assumptions and "contemplations"? Did not these thousands of hours and shifts fulfill the Intention to drive?

After waiting12 years for my business medallion, Officer Suslow (Taxi Commission) awarded me my medallion and asked me "what company will you join?" I told him "Yellow Cab CoOp" he said "good, congratulations, have a nice life". The Taxi Commission never stipulated

by word or written documents that in our old age or disability our business medallions would be revoked if we couldn't through no fault of our own drive. This was in 1995 so they had plenty of time to interpret the 1978 Prop K law and tell us but no one did.

Anyone can "contemplate" anything and then to bolster their false assumptions pass municipal codes after the fact which seems to have been done about Prop K--

I would like to thank you for reading my letter and ask you what other recourse do we have but through you the commissioners?

Please right this wrong and let Mr. Horbal keep his business medallion and all other medallion owners in a similar situation---

Thank you again
Richard Powell

Anyone can "contemplate" and