



## BOARD OF APPEALS

Date Filed: March 14, 2022

# REHEARING REQUEST FOR APPEAL NO. 21-095

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**Dirk Neyhart, Appellant(s)** seeks a rehearing of **Appeal No. 21-095** which was decided on **March 2, 2022**. This request for rehearing will be considered by the Board of Appeals on Wednesday, **March 30, 2022, 5:00 p.m. at City Hall, Room 416, 1 Dr. Carlton B. Goodlett Place. The parties have the option of attending remotely via Zoom and must notify Board staff at least 48 hours in advance of the hearing.**

Pursuant to Article V, § 9 of the Rules of the Board of Appeals, the **response** to the written request for rehearing must be submitted by the opposing party and/or Department no later than **10 days from the date of filing, on or before March 24, 2022** and must not exceed six (6) double-spaced pages in length, with unlimited exhibits. The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [heidimachen@machenlaw.com](mailto:heidimachen@machenlaw.com).

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from each side will be allowed. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Four votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decision of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

**Requestor or Agent (Circle One)**

**Signature: Via Email**

**Print Name: Heidi Machen, attorney for requestor**

1 Heidi Machen (SBN 184278)  
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3 345 Franklin Street, Ste. 333  
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5 Phone: 415-626-1140  
6 Attorney for Appellant, Dirk Neyhart

7 DIRK NEYHART,  
8 Appellant;

CITY AND COUNTY OF SAN  
FRANCISCO

9 v.  
10 SAN FRANCISCO MUNICIPAL  
11 TRANSPORTATION AUTHORITY,  
12 Respondent.

Re: SFMTA's Decision to Revoke Taxi  
Permit ("Medallion") No. 244

**REQUEST FOR REHEARING**

**I. BACKGROUND**

13 On March 2, 2022, the San Francisco Board of Appeals heard the above-captioned matter  
14 as Item No. 8. A similar appeal by Medallion Holder John Russo, also contesting SFMTA's  
15 decision to revoke his Medallion was heard as Item No. 7. The question presented to the Board  
16 of Appeals for both Appellants was this: "Must a taxicab medallion holder also have an A-Card  
17 and California Drivers' License in to be eligible to hold a Medallion under the Transportation  
18 Code?" SFMTA argued that Medallion Holders must have a Drivers' License and A-Card  
19 (driving permit) and Appellant asserts that having a drivers license and A-card are not eligibility  
20 requirements for holding a Medallion.

21 Prior to either hearing, Heidi Machen, attorney advocate for Dirk Neyhart asked a  
22 procedural question. To wit, because Commissioner Lopez, one of five commissioners, was  
23 absent that night, Ms. Machen asked what the options were to ensure a full panel for her client –  
24 and, assumedly, the opportunity to garner the requisite votes for a favorable result. Board  
25 Director Julie Rosenberg responded by quoting from Article 5 §7 of the Board Rules that says,  
26 "The Board generally will not reschedule a matter based solely on the fact that fewer than five  
27 members are present at the hearing. But when the Board hears a matter with less than five  
28 members present, and the vote(s) of the missing member(s) could alter the Board's decision, the

1 Board generally will move to continue its deliberation so that the missing member(s) may  
2 participate in the final vote.”

3 In Mr. Russo’s matter, the Board deadlocked 2-2 on whether to uphold or overturn the  
4 SFMTA’s revocation. (Commrs. Honda and Chang on the side of the Medallion Holder and  
5 Commrs. Swig and Lazarus on the side of SFMTA). We note that four votes are required to  
6 overturn a departmental action.

7 Commissioner Honda then motioned, *as had been approved by a majority of*  
8 *Commissioners in prior similar matters involving disabled taxicab medallion holders*, to  
9 continue the hearing to the call of the chair. Again, the vote deadlocked at 2-2, with identical  
10 alliances. Executive Director Rosenberg then announced that the underlying decision of SFMTA  
11 would then take affect, “as a matter of law.” And, Dir. Rosenberg dismissed the idea of  
12 continuing the hearing to allow Commissioner Lopez to consider Commissioner Honda’s motion  
13 because the Board’s decision was “non-substantive,” thus distinct somehow from a “substantive”  
14 motion in re: the Board’s Rules. Unlike the citation that she had earlier provided from Article 5,  
15 Section 7, Dir. Rosenberg did not provide a citation for the “non-substantive” versus  
16 “substantive” distinction.

17 Mr. Neyhart’s case followed the exact same course of events as Mr. Russo’s case.

## 18 **II. ARGUMENT**

19 The standard of review for granting a rehearing includes instances when a rehearing is  
20 needed to “prevent manifest injustice.” (*See*, Rules of the Board of Appeals, Article 5, §9(b),  
21 herein attached for convenience as Exhibit A.) Manifest injustice, as defined by Black’s Law  
22 Dictionary is “A direct, obvious, and observable error. . . such as a defendant’s guilty plea  
23 that is involuntary or is based on a plea agreement that the prosecution has rescinded.”

### 24 **A. The Board Failed to Follow its Own Rules in Reaching its Decision.**

25 In Mr. Neyhart’s case, the observable error was a misinterpretation or misapplication of  
26 the Board’s own rules. As stated, in black and white, in the Board’s own rules: [W]hen the Board  
27 hears a matter with less than five members present, and the vote(s) of the missing member(s)  
28 could alter the Board’s decision, the Board generally will move to continue its deliberation so

1 that the missing member(s) may participate in the final vote.” Nowhere does it make a distinction  
2 between a “non-substantive” versus a “substantive” decision. *In arguendo*, the Board’s vote to  
3 continue the matter to the call of the chair would have made a substantive difference for Mr.  
4 Neyhart. Noteably, Mr. Neyhart would continue to hold his medallion if the Commission had  
5 voted to continue the item. Instead, absent the chance for a rehearing, his medallion will be  
6 revoked. This result constitutes manifest injustice as it stems from a direct, obvious and  
7 observable error.

8 **B. The Board Failed to Follow Precedent.**

9 Ralph Waldo Emerson wrote, “A **foolish consistency** is the hobgoblin of little minds.”  
10 (**emphasis** added.)

11 On Feb. 16, 2022: the BOA heard two appeals brought by Medallion Holders challenging  
12 SFMTA. In both appeals, the Board was asked to consider the exact same question as advanced  
13 by Mr. Neyhart’s challenge of SFMTA’s action. Specifically, the Board considered whether or  
14 not a Medallion Holder must qualify to hold a Medallion by having an A-card, which is not  
15 obtainable without a California Drivers License. The outcomes of each of those hearings follow:

- 16 1. Appeal No. 21-064: George Horbal, was continued to call of chair on a 3-2 vote with  
17 Swig and Lazarus dissenting. Result? Mr. Horbal continues to hold his medallion pending  
18 the resolution of his appeal.
- 19 2. Appeal No. 21-069: James Cortesos, was continued to call of chair on a 3-2 vote with  
20 Swig and Lazarus dissenting. Result? Mr. Cortesos continues to hold his medallion  
21 pending the resolution of his appeal.

22 On March 2, 2022, in *Neyhart vs. MTA*, Appeal No. 21-095, Commissioner Honda’s  
23 Motion to continue to the call of the chair failed, assumedly because Commissioner Lopez, who  
24 previously supported the Horbel and Cortesos motion to continue, was absent. Without an  
25 opportunity to reverse this action, Mr. Neyhart will lose his medallion because the deadlocked  
26 vote of 2-2 resulted in the SFMTA’s decision standing as a matter of law.

27 This different result created a break with precedent that is never in the best interest of a  
28 decision-making body. Guarding precedent creates certainty. It is in keeping with the “rule of

1 law” by promoting restraint in decision-makers. Institutions of local government, like courts,  
2 should strive to ensure the law is developed and applied in a consistent and predictable manner  
3 so that citizens have a fair opportunity to order their affairs. Consistent application of the law  
4 fosters confidence that the law is being fairly applied to all. By contrast, inconsistent application  
5 of the law is manifestly unjust and makes this matter ripe for a rehearing.

6 **C. Manifest Injustice is Established By a Form of Implicit Bias: Authority Bias.**

7 Before the Law stands a doorkeeper on guard. To this doorkeeper there comes a man  
8 from the country who begs for admittance to the Law. But the doorkeeper says that he  
9 cannot admit the man at the moment. The man, on reflection, asks if he will be allowed,  
10 then, to enter later. 'It is possible,' answers the doorkeeper, 'but not at this moment.' Since  
11 the door leading into the Law stands open as usual and the doorkeeper steps to one side,  
12 the man bends down to peer through the entrance. When the doorkeeper sees that, he  
13 laughs and says: 'If you are so strongly tempted, try to get in without my permission. But  
14 note that I am powerful. And I am only the lowest doorkeeper. From hall to hall keepers  
15 stand at every door, one more powerful than the other. Even the third of these has an  
16 aspect that even I cannot bear to look at.' These are difficulties which the man from the  
17 country has not expected to meet, the Law, he thinks, should be accessible to every man  
18 and at all times, but when he looks more closely at the doorkeeper in his furred robe, with  
19 his huge pointed nose and long, thin, Tartar beard, he decides that he had better wait until  
20 he gets permission to enter.

21 *(Franz Kafka, The Trial)*

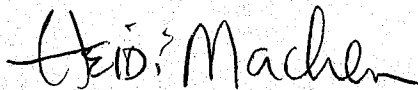
22 With all due respect to Director Rosenberg, the only authority supporting the concept that  
23 the Board’s rules make a distinction between “substantive” and “non-substantive” decisions for  
24 the purpose of whether or not to engage a missing Board member for a tie-break is Dir.  
25 Rosenberg herself. The Board’s rules do not make such a distinction as you can see for  
26 yourselves by reading the language contained within the attached rules. As well, the only  
27 authority defining a “substantive” versus “non-substantive” decision of the Board is Dir.  
28

1 Rosenberg. Blind reliance only on Dir. Rosenberg’s interpretation exhibits implicit bias,  
2 specifically “authority bias.” Authority bias is when an idea or opinion is given more attention or  
3 thought to be more accurate because it is provided by an authority figure, here the Director of the  
4 Department. Even if a City Attorney were consulted, we argue that City Attorney is there as an  
5 advocate of SFMTA. Instead, we urge Board to reach their own conclusion in this matter by  
6 consulting the Board Rules as provided. We are confident that you will conclude that the rules do  
7 not distinguish between a “substantive” versus a “non-substantive” decision in the relevant  
8 section that favors allowing the fifth Commissioner to cast his vote on the motion to continue the  
9 matter to the call of the chair. In arguendo, if you conclude that the Board Rules do distinguish  
10 between “substantive” and “non-substantive” decisions (a.k.a. votes) of the Board, we are  
11 confident that you will conclude that Mr. Neyhart losing his medallion as a result of this vote is a  
12 substantive result – and, that Commissioner Lopez (who, incidentally is a licensed attorney)  
13 should have an opportunity to vote on Commissioner Honda’s motion. Failure to include the full  
14 panel in the Board’s decision constitutes manifest injustice. We ask that the two Commissioners  
15 who have agreed with SFMTA’s position on the underlying appeal understand that our request to  
16 approve a rehearing is an **entirely different issue** from how you may choose to vote on the  
17 actual appeal.  
18  
19  
20  
21

### 22 III. CONCLUSION

23 For the foregoing reasons, we urge the Board of Appeals to right this manifest injustice  
24 and grant a rehearing in the above-captioned matter.

25 Respectfully submitted,

26 

27 Heidi Machen

28 Attorney for Dirk Neyhart, Appellant

# EXHIBIT A



## RULES OF THE BOARD OF APPEALS

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### ARTICLE I – OFFICERS AND TERMS OF OFFICE

**Section 1.** The President and Vice President shall be elected at the first regular meeting of the Board held after the 15th day of January of each year, or at a subsequent meeting after the 15th day of January. They shall hold office for one year at the pleasure of the Board, and until their successors are elected.

**Section 2.** The Board at any regular or special meeting shall appoint an Executive Secretary, who shall hold office at the pleasure of the Board and shall serve as Department Head of the Board of Appeals.

### ARTICLE II – DUTIES OF OFFICERS

**Section 1.** The President shall preside at all meetings of the Board, and shall perform all other duties necessary or incidental to his or her office.

**Section 2.** In the event of the incapacity or absence of the President, the Vice President shall take the place and perform the duties of the President.

**Section 3.** It shall be the responsibility of the Presiding Officer to assure a fair hearing to all parties, and that these Rules as adopted are adhered to. It shall be the responsibility of the majority of the Board that the duties of the President and Vice President are properly exercised.

**Section 4.** The Executive Secretary shall serve as administrative head of the department and shall have responsibility for all activities of the department. He or she shall direct and supervise the personnel of the department and shall plan, assign, coordinate and review the work and activities of the department. He or she shall allocate the time, personnel and funds of the department and shall be responsible for the administration of all regulatory measures entrusted to the department. He or she shall make investigations and reports of the Board's hearings and



official actions, and shall certify all Notices of Decision and Order and all documents relating to the department. He or she shall examine incoming mail for proper referral and answer correspondence, shall maintain records of accounts and departmental operations, and shall verify payrolls and requisitions. The Executive Secretary shall prepare an agenda for each regular meeting, showing the names of the parties and the nature of the order or decision from which an appeal has been taken.

### **ARTICLE III – MEETINGS**

**Section 1. Regular Meetings.** Regular meetings shall be open to the public and shall be held as scheduled on Wednesdays at 5:00 p.m. in the Board hearing room provided in City Hall.

**Section 2. Special Meetings.** Subject to the provision of appropriate notice, the President or a majority of Board members may call a special meeting at any time.

**Section 3. Meeting Cancellation.** The President may cancel any regular or special meeting when notified by the Executive Secretary that there is insufficient business to be conducted or that a quorum (i.e., three Members) will not be in attendance. The Executive Secretary shall notify Board members, parties and members of the public as soon as reasonably possible that the meeting has been cancelled, and shall cause a notice of the cancelled meeting to be conspicuously posted on or near the door of the meeting place prior to the scheduled time of the meeting.

**Section 4. Notice of Hearing.** When an appeal is filed, the Executive Secretary shall mail notice of the initial hearing to the parties. Announcement at a public hearing of the time and place to which a hearing is rescheduled or continued shall be deemed sufficient notice and no mailed notice shall be required for any such rescheduled or continued hearing.

**Section 5. Order of Agenda.** Requests for jurisdiction and for rehearing, and matters for further hearing shall generally be considered first on the agenda. At the President's discretion, the ordering of items on the published agenda or the order in which the Board takes up items at any meeting may differ depending upon the circumstances.

**Section 6. Order of Presentations.** Except when the Presiding Officer finds good cause to order the presentations otherwise, the order of presentation of an appeal shall be as follows:

(a) In all cases, the appellant shall speak first and shall be allowed seven minutes to present relevant testimony and evidence. Then the permit holder, representatives of the department, board, commission or person from whose order the appeal is taken, and/or other parties, shall be allowed seven minutes for presentation of relevant testimony and evidence. Three minutes for rebuttal shall be provided to all parties in this same order.

(b) In all cases, the Board may request a departmental response at its own discretion.

(c) In cases of multiple appeals of the same departmental action or permit, the appeals shall be joined and the appellants shall each be allowed seven minutes to present relevant testimony and evidence and three minutes for rebuttal. The President shall set the amount of time given to the respondent(s) and other parties, as circumstances warrant and in the interest of fairness, but shall allow no less than seven minutes to present relevant testimony and evidence and three minutes for rebuttal.

(d) Public Comment.

(i) Persons who are not parties to an appeal or representatives of a party may speak once for up to three minutes during the public comment portion of the hearing. The Presiding Officer may limit public comment on an agenda item to less than three minutes per speaker based on such factors as the nature of the agenda item, the number of anticipated speakers for that item, and the number and anticipated duration of other agenda items. Board staff shall provide speaker cards for those intending to speak during public comment to assist in maintaining decorum in the hearing room and to aid in the preparation of Board minutes. The completion of a speaker card is not required; members of the public may speak anonymously.

(ii) Representatives of a party shall address the Board during that party's allotted time and may not also speak during public comment. Representatives are persons with a financial or other close connection to a party, such as family or household members; architects, attorneys, engineers, or similar paid advisors or agents; and, in appeals where an association or organization is a party, officers or board members of the governing board of the association or organization.

**Section 7. General Public Comment.** On each agenda, there will be time set aside for members of the public to address the Board on items of interest to the public that are within the

subject matter jurisdiction of the Board and do not relate to a matter calendared on the agenda for hearing. Each member of the public may address the Board for up to three minutes. (California Government Code §54954.3(a); S.F. Administrative Code §67.17.) Members of the public shall reserve comment with respect to agenda items to when that item is called.

#### **ARTICLE IV – ADMINISTRATIVE RECORD**

**Section 1. Recording as Official Record.** Board proceedings are video recorded and broadcast by SFGTV (Department of Technology). Except as provided in Section 2, below, the SFGTV recording shall be the administrative record for each hearing.

**Section 2. Designating Transcript as Official Record.** Any party (or parties, jointly) may provide a certified court reporter to transcribe an appeal hearing. Upon request of such party or parties prior to the start of the hearing, the Board may designate the court reporter's transcription as the official record of that proceeding if the parties so stipulate, provided that the requestor agrees to supply the Board with a certified copy of the transcript at no cost to the Board.

#### **ARTICLE V – APPEAL PROCEDURES**

**Section 1. Filing an Appeal.** The method of appeal shall be as set forth in the San Francisco Business and Tax Regulations Code, Article I, Sections 8 through 16, 26, 30 and 31, and under these Rules. When counting "calendar days" for purposes of calculating the deadline for filing an appeal, the appeal period begins the day after the date of the written departmental determination being appealed. If the last calendar day falls on a weekend or City holiday, the last day to file the appeal or other action is the next business day.

(a) The appellant shall submit one copy of the permit, application or other departmental determination being appealed.

(b) The appellant shall complete a Preliminary Statement of Appeal form provided by the Board setting forth the reasons or grounds for the appeal and what action is being requested of the Board. The appellant may attach a brief supplementary statement to the Preliminary Statement of Appeal, which shall be double-spaced and shall not exceed one (1) page in length. No other exhibits or submissions are allowed at this time.

(c) The Executive Secretary or his or her designee will assign a hearing date and provide the hearing date and briefing schedule to the parties, in writing.

(d) The appellant shall submit the required fee and provide Board staff with a valid address and telephone number.

(e) Appeals shall be filed at the Board office during regular business hours up to 4:30 p.m.

**Section 2. Briefing.** Briefs and other submittals shall conform to the requirements set out in Section V.4, and will be accepted as follows:

(a) Appellant may submit an **APPELLANT'S BRIEF**, due at the Board office no later than 4:30 p.m. three (3) Thursdays prior to the hearing date.

(b) The permit holder, variance holder, determination holder, Business and Tax Regulations Code, Article I Section 14 party, or Department may submit a **RESPONDENT'S/OTHER PARTIES' BRIEF** (whether or not the appellant submits an Appellant's Brief), due at the Board office no later than 4:30 p.m. one (1) Thursday prior to the hearing date.

(c) **MEMBERS OF THE PUBLIC** who are not parties to an appeal or representatives of a party (as defined in Rule III.6(d)(ii)), are welcome to submit written materials to the Board. Members of the public who want their submittals considered by the Board prior to the hearing, may submit materials due at the Board office no later than 4:30 p.m. one (1) Thursday prior to the hearing date. In addition, non-parties may present materials in person during public comment. This subsection is to give direction to those members of the public who want their submittals to be considered by the Board prior to hearing, and in no way interferes with the public's rights under the San Francisco Sunshine Ordinance (S.F. Adm. Code Ch. 67). Parties to an appeal may request copies of materials submitted by members of the public pursuant to San Francisco Administrative Code Chapter 67.28.

(d) Pursuant to Business and Tax Regulations Code, Article I, Section 14, requestors of Discretionary Review (DR) by the Planning Commission, whose property is immediately adjacent to the subject property and who have prevailed or partially prevailed at the Planning Commission, shall have the status of a party in an appeal to the Board. In the event there is more than one such requestor, the Board may, at its discretion, limit the time for oral presentation to three minutes for each adjacent property owner and a combined total of three minutes of rebuttal for all adjacent property owners.

(e) If the last calendar day to submit a brief or other submittal falls on a weekend or City holiday, the last day to file the brief or other submittal will be as established by the Executive Secretary.

(f) Parties shall be limited to the briefs or submittals authorized by these Rules unless otherwise instructed by the Board. In the event a public hearing is continued by the Board, the Board shall rule on whether to accept any additional written materials and set the deadline for submittal.

(g) In appeals where architectural, construction or engineering plans are at issue, the permit holder or project sponsor is encouraged to submit the City-approved plans associated with the project at the time they submit their brief. The plans should be reduced to an 11" x 17" format.

(h) The parties are encouraged to submit photographs, maps, plans and drawings as exhibits to their briefs. Such exhibits may also be used in presentations and submitted at hearing by displaying the document on the overhead projector and providing a copy to the clerk. Computer-assisted presentations are permitted at hearing to the extent the requisite technology is available in the hearing room. The presenter bears the sole risk that such technology may not be available or operative at any given meeting.

(i) Except as otherwise provided in this section, the Executive Secretary shall reject late submittals and will not include them in the administrative record in the case or provide them to Board members for their review. A party may file a written request for permission to file late on a form provided by the Board. The request must be provided to the other parties. Late submittals

will be accepted upon (i) the consent of the other parties, or (ii) the consent of the President upon a showing of good cause. This section does not apply to the submittal of plans.

(j) These Rules shall be interpreted so as to be consistent with the public's rights under the San Francisco Sunshine Ordinance, S.F. Admin. Code Ch. 67.

**Section 3. Designation of Experts.** The Board may call upon and may designate without charge independent experts as it deems necessary, to report upon and make recommendations concerning technical matters in appeals.

**Section 4. Requirements for Written Submittals.**

(a) All briefs, whether typewritten or handwritten, shall be double-spaced. Typewritten submittals shall be in a font size no smaller than twelve (12) point. The Executive Secretary, at his or her discretion, may reject submittals that do not conform to these requirements.

(b) Unless otherwise permitted by the President pursuant to subsection (vii) below, the following page limits shall apply:

(i) Appeal briefs shall not exceed twelve (12) pages.

(ii) Jurisdiction Request and Rehearing Request briefs shall not exceed six (6) pages.

(iii) Letters requesting revisions to draft Findings submitted pursuant to Section V.8 below shall not exceed three (3) pages. No exhibits or attachments shall be allowed.

(iv) Except for the filing of a letter requesting revisions to draft Findings, in all other cases, submittals may include an unlimited number of pages of exhibits. Exhibits shall not include additional written argument by a party. Where exhibits exceed ten (10) pages in length, the Board encourages the parties to separate exhibits with tabs and provide a table of contents.

(v) Parties may offer arguments and exhibits as part of their oral presentations to the Board which are not part of their written brief.

(vi) The Executive Secretary shall reject any pages of briefing that exceed the applicable page limit and shall not include them in the administrative record in the case or provide them to Board members for their review.

(vii) A party may file a written request for permission to file a longer brief at least 48 hours before the brief is due. The request must be provided to the other parties, and must state extraordinary reasons why the argument cannot be made within the stated page limit. For good cause shown, the President may grant such a request.

(c) In all cases, an original and ten copies of the brief, all exhibits, including plans, must be submitted, in collated form, to the Board office at the time of filing.

(d) Except for the filing of a Preliminary Statement of Appeal, a Jurisdiction Request or Rehearing Request, every submittal by a party must be delivered to the opposing parties or, if known, to a party's representative, using a method that ensures delivery on the same day as it is delivered to the Board. An item is "submitted" when delivered to the Board offices.

### **Section 5. Communications With the Board.**

The Board is a quasi-adjudicatory body whose decisions are rendered based on the evidence that is before the Board in the public record. In order to preserve the fairness and integrity of the Board's proceedings, any evidence that the parties or members of the public wish the Board to consider in deciding a case must be made part of the public record as follows:

(a) Parties, their representatives, and members of the public should present evidence regarding a pending case only through the following means: (i) at a public meeting of the Board; and/or (ii) through written submissions to the Board, as provided for in these Rules. Parties, their representatives, and members of the public should refrain from communicating evidence, facts or information about the subject matter of a pending case outside of the public record.

(b) Any written communications to the Board containing information or evidence pertaining to a case pending before the Board must be submitted through the Executive Secretary, and not sent to individual Board member(s).

(c) This Section does not apply to communications with the Board about purely procedural matters or ministerial issues, including but not limited to, scheduling hearings.

(d) This Section is in no way intended to interfere with the public's rights under the San Francisco Sunshine Ordinance (S.F. Adm. Code Ch. 67).

**Section 6. Site Visits.** If a Board member makes a site visit to the subject property of a pending appeal, the Board member shall limit any discussion to understanding the site's physical conditions underlying the appeal, and shall not otherwise discuss the matter under

appeal outside of a public hearing. Prior to commencement of the hearing to which such visit relates, the Board member must disclose the visit, and what he or she observed during the visit, on the record. If a quorum of the Board conducts a site visit at the same time, it must be noticed pursuant to the special meeting requirements of the Sunshine Ordinance (S.F. Admin. Code Ch. 67.6(f)).

### **Section 7. Continuances and Reschedulings.**

(a) At the time of hearing, upon the request of any party, the Board may grant rescheduling requests or continuances for good cause shown. The Board generally will not reschedule a matter based solely on the fact that fewer than five members are present at the hearing. But when the Board hears a matter with less than five members present, and the vote(s) of the missing member(s) could alter the Board's decision, the Board generally will move to continue its deliberation so that the missing member(s) may participate in the final vote.

(b) At any time before the hearing date, the parties may jointly request that the Executive Secretary reschedule the hearing to a mutually agreed upon date. Where a rescheduling request is opposed by one or more parties, the President may approve the request if it is made prior to the publication of the agenda for that hearing. After the relevant meeting agenda has been published, a contested rescheduling request may be granted only by a majority of the members present at a public hearing on the matter.

### **Section 8. Consideration of Written Findings**

In cases where the Board decides to adopt written Findings summarizing the reasons for its decision at a separate subsequent hearing, the parties will be given an opportunity to review and comment on the draft Findings before they are considered by the Board. In such cases, parties may submit comments to the Executive Secretary in a format and on a schedule specified by the Executive Secretary. If any suggested revisions are not accepted by the Executive Secretary, the parties may, but are not required to, submit a letter to the Board addressing the change(s) requested and the reason(s) for or against such change(s) one Thursday prior to the Board's hearing on the Findings. Such letter must conform to the requirements set out in Section V.4. In addition, the parties will have three (3) minutes to present oral argument to the Board at the hearing on the Findings.

### **Section 9. Rehearing Requests.**



(a) Requests for rehearing must be filed within ten days of the hearing at which the Board made its decision. A Rehearing Request may be filed only in writing by a party to an appeal. Written requests for rehearing shall conform to the briefing requirements in Section V.4. The response to a written request for rehearing must be submitted by the other party or real party in interest no later than ten days from the date of filing and shall conform to the briefing requirements set out in Section V.4. Any written material from any party that is not submitted in accordance with these Rules shall only be accepted by the Board pursuant to Section V.4. No requests for rehearing shall be accepted after the Board has either considered and rejected such a request for rehearing or has voted to rehear such a matter and has reheard it and voted.

(b) Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing. The written request shall state:

- (i) the nature and character of the new facts or circumstances;
- (ii) the names of the witnesses and/or a description of the documents to be produced; and
- (iii) why the evidence was not produced at the original hearing.

(c) Failure to exercise due diligence to produce the new facts and circumstances at the previous hearing shall be deemed grounds for denial of the request.

(d) The Board shall allow testimony of up to three minutes from each party when hearing a Rehearing Request.

(e) This section shall not apply to any motion to rehear a case made by the Board's own initiative.

#### **Section 10. Jurisdiction Requests.**

(a) After the appeal period has expired, the Board lacks jurisdiction over a matter except in extraordinary cases where the Board finds that the City intentionally or inadvertently caused the requestor to be late in filing the appeal.

(b) A request for jurisdiction must be in writing and shall conform to the briefing requirements set out in Section V.4. The response to a written request for jurisdiction must be submitted by the permit or determination holder(s) no later than ten days from the date of filing, and shall

conform to the briefing requirements set out in Section V.4. Any written material from any party that is not submitted in accordance with these Rules shall only be accepted by the Board pursuant to Section V.4.

(c) The Board shall allow testimony of up to three minutes from each party when hearing a Jurisdiction Request.

(d) If the Board grants a Jurisdiction Request, the requestor must file any appeal within five (5) days from the date of the Board's decision.

**Section 11. Administrative Dismissals.** The Executive Secretary shall administratively dismiss any appeal for which the underlying subject matter has become moot as a matter of law. The Executive Secretary shall promptly notify all parties to such appeal that the matter has been dismissed.

**Section 12. Parliamentary Procedure.** At the discretion of the President, except where the Charter or other rules provide required procedure, meetings shall be governed by the most recent edition of Robert's Rules of Order.

**Section 13. Indigency.** The Executive Secretary may waive the required appeal fee where the filing party meets the indigency standards set out in California Government Code Section 68632 or its successor, and submits an Affidavit of Indigency.

## **ARTICLE VI – AMENDMENTS**

**Section 1. Amendment of Rules.** These Rules may be amended by the Board at any Regular Meeting by a majority vote following a public hearing, provided that at least 10 days public notice is given.

Rules effective as of November 16, 1982; Amended August 28, 1985; Amended February 5, 1986; Amended April 20, 1988; Amended November 30, 1988; Amended October 14, 1992; Amended September 22, 1993; Amended April 12, 1995; Amended July 10, 1996; Amended February 5, 1997; Amended August 13, 1997; Amended June 10, 1998; Amended February 10, 1999; Amended April 4, 2001; Amended November 7, 2001; Amended January 9, 2002; Amended February 20, 2008; Amended July 9, 2008; Amended December 15, 2010.

**BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)**

SAN FRANCISCO BOARD OF APPEALS

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DIRK NEYHART,

Appellant,

vs.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY,

Respondent

Appeal No. 21-095

Medallion Permit No. 244

**SFMTA TAXI DIVISION’S RESPONSE  
TO REQUEST FOR REHEARING**

Hearing Date: Wednesday, March 30,  
2022

Time: 5:00 p.m.

Place: City Hall, Room 416

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

**INTRODUCTION**

San Francisco Municipal Transportation Agency (SFMTA) hereby files this Response to Appellant’s Request for Rehearing filed on March 14, 2022.

**ARGUMENT**

Section 9 of the Rules of the Board of Appeals (hereinafter Rules) governs Rehearing Requests. Section 9(b) states that “[e]xcept in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request *only upon a showing that new or different material facts or circumstances have arisen*, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.” [Emphasis added]. Thus, Section 9(b) only grants a narrow exception for rehearing where *new or different material facts* have arisen **and** the new or different material facts could have affected the outcome. Parties seeking a rehearing are required to submit a written request that <sup>1</sup> states the following:

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<sup>1</sup> Section 9(b) states that “[t]he written request shall state:” The use of the word “shall” indicates that it is mandatory that the requesting party plead all three items.

- (i) The nature and character of the new facts or circumstances;
- (ii) The names of the witnesses and/or description of the documents to be produced; and
- (iii) Why the evidence was not produced at the original hearing.

Appellant's request for rehearing should be denied for failure to meet the standard set forth in Section 9(b) of the Rules. Here, Appellant did not show that there are any new or different material facts that have arisen. He also failed to state the nature of any new facts or circumstances, and he did not provide any names of witnesses or even a description of any documents to be produced. Because no new facts or circumstances have arisen, it logically follows that he also did not state why any new evidence was not produced at the original hearing.

**CONCLUSION**

Pursuant to its own rules, the Board of Appeals may grant a Rehearing Request only upon a showing that new or different material facts have arisen, and that the new material facts could have affected the outcome. Appellant has not presented any new or different material facts that would make this matter eligible for rehearing. Because nothing new or changed has been presented, Appellant has also failed to show how the outcome of the original hearing would have been affected. By failing to show that new or different material facts or circumstances have arisen, this matter is not eligible for Rehearing and the Request for Rehearing should be denied.

For the foregoing reasons, the Board of Appeals should deny the request for rehearing.

Respectfully Submitted,



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Philip Cranna  
Enforcement & Legal Affairs Manager  
SFMTA Taxi Services

Date: 3.24.2022

DOCUMENTS SUBMITTED FOR THE HEARING ON MARCH 2, 2022

**BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO**

Appeal of  
DIRK NEYHART, )  
Appellant(s) )  
vs. )  
MUNICIPAL TRANSPORTATION AGENCY, )  
Respondent )

Appeal No. **21-095**

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on September 22, 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 ISSUANCE on September 9, 2021 to Philip Cranna, of a Taxi Medallion (Taxi Services Notice of Nonrenewal is denied, and medallion #325 is not now eligible for revocation) at (Neyhart).

**APPLICATION NO. 244**

**FOR HEARING ON March 2, 2022**

Address of Appellant(s):

Address of Other Parties:

Dirk Neyhart, Appellant(s) c/o Heidi Machen, Attorney for Appellant(s) Machen Law Firm 345 Franklin Street, Suite 204 San Francisco, CA 94102	Philip Cranna, Determination Holder(s)  San Francisco, CA 94103
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Date Filed: September 22, 2021

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 21-095**

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I / We, Dirk Neyhart, hereby appeal the following departmental action: **Statement of Decision: SFMTA v. Dirk Neyhart (Taxi Medallion No. 244)** which was issued by the **SFMTA Hearing Section** on **September 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 **Wednesday, November 10, 2021, (no later than three Wednesdays prior to the hearing date due to the Veterans Day Holiday)**. 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](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [Philip.cranna@sfmta.com](mailto:Philip.cranna@sfmta.com) and [jim.emery@sfcityatty.org](mailto:jim.emery@sfcityatty.org).

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **Tuesday, November 23, 2021, (Note: the brief is due earlier than the regular Board's briefing schedule due to the Thanksgiving Holiday)**. 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](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org) and [heidimachen@machenlaw.com](mailto:heidimachen@machenlaw.com).

Hard copies of the briefs do NOT need to be submitted.

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

Hearing Date: **Wednesday, December 1, 2021, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date. (Note: If the City Health Orders permit, the hearing may be held in-person at SF City Hall. Advance notice will be provided to the parties).

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 Tuesday, November 23, 2021 by 4:30 p.m. to [boardofappeals@sfgov.org](mailto: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/boa](http://www.sfgov.org/boa) You 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.

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**The reasons for this appeal are as follows:**

See attachment to the preliminary Statement of Appeal

**Filed electronically by Heidi Machen, Attorney for Appellant(s)**



Background: By decision dated September 9, 2021, SFMTA revoked Medallion 244 from Mr. Neyhart, who now seeks to appeal this decision for reasons that include:

1) The hearing officer found that “Mr. Neyhart, by his own testimony, is permanently disabled, and thus is ineligible for an accommodation under this policy.”

**However**, SFMTA's Board of Directors' Resolution No. 09-138, created a policy 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.” Mr. Neyhart denies he testified to permanent disability and he is not a physician. He should be allowed to seek and submit a doctor's analysis to participate in the ADA exemption.

2) The hearing officer found that the SFMTA Board's Transportation Code requires Mr. Neyhart to hold an active A-Card; and, that “[w]ithout a California driver's license, an A-Card cannot be maintained, and without a current A-Card, a taxi driver's. . . medallion may be revoked. On that basis the revocation is appropriate here under the circumstances.” The hearing officer cursorily dismisses a previous A-Card exception that SFMTA staff gave to Charles Rathbone, by saying that it was “applied to Mr. Rathbone's individual case, and cannot be applied as a general program wide policy.”

**However**, Mr. Rathbone's example serves as precedent of *what is possible* in individual cases. To the extent that SFMTA's Board created an exception to the driving requirement and SFMTA staff have the leeway to administer that program, we strongly disagree that staff cannot apply that same Rathbone A-card exception to Mr. Neyhart's individual case. To the extent that SFMTA staff waived the requirement for Mr. Rathbone simply because he did not want to renew his A-card when he was on an ADA exemption from driving, it would seem even more appropriate as an *ADA reasonable accommodation* for SFMTA staff to offer the same accommodation to Mr. Neyhart (assuming he otherwise qualifies), who, because of his disability, is unable to renew his drivers' license per the DMV's rules.

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**  
**SFMTA HEARING SECTION**

**SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY,**

vs.

**STATEMENT OF DECISION**

**DIRK NEYHART,**  
Respondent

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**I. INTRODUCTION**

This case came on for administrative hearing pursuant to an action by the San Francisco Municipal Transportation Agency (“SFMTA” or “Taxi Services” herein) after a Complaint for Nonrenewal of Medallion was sent to Respondent Dirk Neyhart on or about November 2, 2020.

The SFMTA Complaint alleges that Mr. Neyhart had not taken the necessary permit renewal measures to preserve his status as a qualified taxi medallion holder, and on that basis the SFMTA’s Taxi Services had notified Mr. Neyhart on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

On November 20, 2020, Mr. Neyhart submitted to SFMTA a timely request for a hearing.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Neyhart by this Hearing Section for July 27, 2021, in accordance with the provisions of Article 1100 of the SFMTA’s Transportation Code (“TC”). 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 July 27, 2021, Mr. Neyhart appeared via video at the time of this hearing, with his attorney, Heidi Machen. SFMTA Taxi and Accessibility manager Philip Cranna and 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, 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 qualified medallion holders.

In terms of Mr. Neyhart's current status, the Complaint stated that Mr. Neyhart's A-Card is inactive. Without a current A-Card, the renewal of Mr. Neyhart's medallion #244 cannot 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(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:**

Philip Cranna, an Enforcement and Legal Affairs Manager in the SFMTA's Taxi Services, argues as to the origin and reliability of the exhibits offered. In representing Taxi Services, Mr. Cranna confirms that according to the applicable laws referenced above, SFMTA's effort to revoke medallion #244 for an expired A-Card is appropriate under these circumstances.

SFMTA alleges that Mr. Neyhart is not eligible for accommodation to the full-time driving requirement, under either the stipulated decision in the case of *William Slone and Michael Merrithew v. Taxi Commission*, or the 2009 ADA program. SFMTA contends that the stipulated agreement did not negate the Court's decision in *Sloane* that the full-time driving requirement remains an essential eligibility requirement. SFMTA contends that Resolution 09-138 allows relief of the full-time driving requirement only to a medallion holder who is *temporarily* physically incapable of driving, and that the respondent is ineligible for accommodation under this policy because his physical condition is certainly permanent, and not temporary.

SFMTA alleges the respondent was not denied due process as he has no vested right, or legal entitlement, to surrender his medallion for consideration. SFMTA also alleges that it has not waived the requirement that medallion holders must have an active A-Card.

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. Mr. Yeung confirmed that the evidence of record established that Mr. Neyhart's A-Card is currently inactive and has been inactive since 1998.

SFMTA's documents admitted to the record:

- Notice of Nonrenewal, 9/28/2020
- Request for Hearing, 10/27/2020
- Complaint for Nonrenewal, 11/2/2020
- GTMS Search 11/2/2020,
- Response Brief, 7/22/2020

#### **B. Dirk Neyhart, Respondent:**

Mr. Neyhart testified that he was the victim of a crime that left him disabled and blind since 1997, and that his condition was reported by his physician to the DMV who revoked his driver's license. Mr. Neyhart testified that since 1998, he was unable to drive a taxicab, to qualify for a driver's license or to hold an A-Card. However, he continued to submit his owner operator form to the City every year declaring his intention to drive as required to maintain his taxi permit (medallion). Mr. Neyhart testified that he applied for relief and was granted accommodations in 2006, 2007 and 2008, waiving his driving requirement for those periods.

Mr. Neyhart testified that after 2008, the City did not notify him of the revocation of the previously adopted ADA policy under which he received driving relief accommodations; and he was not informed of the change in ADA policy pursuant to SFMTA Board of Director's Resolution 09-138.

The attorney for the respondent argues that Mr. Neyhart has renewed his medallion permit every year since 1997 and should be allowed to continue because Mr. Neyhart's disability qualifies him for an accommodation from the A-Card's full-time driving requirement, and because SFMTA never offered its remedies for disabled drivers under the Taxi Medallion Transfer Program.

Mr. Neyhart's attorney argues that the stipulated decision in the case of *William Slone and Michael Merrithew v. Taxi Commission* shows the City's prior intent to help disabled medallion holders by providing accommodations to disabled medallion holders from the "full-time driving requirement," because in *Slone* one litigant was allowed to sell his medallion, and the other was able to receive an accommodation under the 2009 ADA program.

Mr. Neyhart's attorney also argues that SFMTA has previously waived the requirement that medallion holders must have an A-Card in order to renew a taxi permit. In support of this argument, a notarized declaration by Mr. Charles Rathbone was presented showing that in 2017, SFMTA's Manager and agent, Paige Stanfield, responded to Mr. Rathbone's inquiry as to whether maintaining an active A-Card was a condition of holding a taxicab permit. Mr. Rathbone's notarized declaration contains an email from Paige Stanfield to Mr. Rathbone stating "No, if you are not driving, you do not have to renew." The respondent argues that Mr. Rathbone, the recipient of that advice, relied on Ms. Stanfield's advice for several years and that this departmental policy would be assumed to equally apply to Mr. Neyhart, who should be given equal opportunity to participate in the ADA exception to the driving requirement for permit holders without having to renew his A-Card.

The respondent argues that SFMTA failed to apprise him of his rights under programs designed to aid disabled medallion holders, thus depriving Mr. Neyhart of significant due process. As such, SFMTA's effort to revoke Mr. Neyhart's medallion should be rejected.:

The following documents offered by Dirk Neyhart were reviewed and admitted to the record:

- Respondent's Brief, 7/16/2021
- Email response from Dirk Neyhart to SFMTA, 11/23/2020
- Declaration of Dirk Neyhart, 7/6/2021
- SFMTA Board Resolution No. 09-138
- *Slone v Taxi Commission*, U.S.C.A. 9<sup>th</sup> Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- Declaration of Charles Rathbone  
Email from Paige Stanfield to Charles Rathbone, 3/27/2017

## V. FINDINGS

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

The SFMTA Board Resolution 09-138 provides that a medallion holder should be relieved of the full-time driving requirement for limited periods during which the medallion holder is temporarily rendered physically incapable of driving. The limited period under this policy may not cumulatively exceed three calendar years for the same condition. Under this policy, a medallion holder who is permanently physically incapable of meeting the full-time driving requirement is not entitled to such relief, and may properly be required to relinquish his or her medallion to the SFMTA. Mr. Neyhart, by his own testimony, is permanently disabled, and thus is ineligible for an accommodation under this policy.

The stipulated agreement in the *Slone v. Taxi Commission* permitted one of the medallion holders to participate in a pilot program which would allow him to sell his medallion to an authorized purchaser, an option that was previously not available. The other litigant in the case

did not elect to participate in the pilot program, but instead subjected himself to SFMTA's 2009 ADA policy. However, the stipulation did not negate the Court's finding that the Taxi Commission's interpretation and application of the full-time driving requirement was consistent and not in violation of the ADA, making the full-time driving requirement an essential condition of eligibility.

SFMTA's Medallion Transfer Program, under the San Francisco Transportation Code section 1116(a)(1), provides medallion holders that are permanently disabled, whether or not subject to the full-time driving requirement, eligibility to surrender their medallion to the SFMTA for consideration. However, Section 1116(a)(4) states that "this Section does not confer on a Medallion Holder a vested right, or other legal entitlement, to surrender a Medallion for consideration." As such, Mr. Neyhart did not, and does not now, have a vested right to surrender his medallion. Therefore, he was not denied due process.

The requirement that medallion holders subject to the full-time driving requirement must hold an active A-Card is established by the SFMTA Board in its Transportation Code legislation. Individual staff within the Agency do not have the authority to change the policies set in the Transportation Code. The email that Mr. Rathbone relied on as an ADA exception to the full-time driving requirement for permit holders without having to renew the A-Card, applied to Mr. Rathbone's individual case, and cannot be applied as a general program wide policy. Therefore, SFMTA has not waived the requirement in the TC that medallion holders must have an active A-Card.

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 may be revoked. On that basis the revocation of this medallion is appropriate here under the circumstances.

## **VI. ORDER**

By reason of the Findings stated above, the Taxi Service's Notice of Nonrenewal in this matter is upheld, and medallion #244 is now eligible for revocation.

Dated this 9<sup>th</sup> day of September, 2021

*Ivan Morales*

Ivan Morales

Neutral Hearing Officer

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)

Heidi Machen (SBN 184278)  
MACHEN LAW  
345 Franklin Street, Ste. 333  
San Francisco, CA 94102  
Phone: 415-626-1140  
Attorney for Appellant, Dirk Neyhart

DIRK NEYHART,  
Appellant;

v.  
SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AUTHORITY,  
Respondent.

DATE: December 1, 2021  
TIME: 5:00 a.m.  
PLACE: Via Zoom

CITY AND COUNTY OF SAN  
FRANCISCO

Re: SFMTA's Decision to Revoke Taxi  
Permit ("Medallion") No. 244

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APPELLANT'S BRIEF

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**I. DEFINITIONS**

**"A-Card" or "Driver Permit"**: a permit issued by the SFMTA to operate a Taxi or Ramp Taxi in the City. [Each applicant for an A-Card must have a California Drivers' License. See, Transportation Code 1103(c)(2)(C).]

**"Color Scheme"**: either the [color or design] of a vehicle used as a Taxi or Ramp Taxi that is distinct to the fleet of a [taxi company, e.g. "Flywheel" or "Desoto" or "Yellow Cab"] . . . that provides taxi-related services to affiliated Drivers and Medallion Holders...

**"Color Scheme Permit"**: a permit issued by the SFMTA, to operate a Color Scheme in the City.

**"Complaint"**: a document issued by SFMTA upon receipt of the Respondent's request for a hearing on a Citation, Notice of Nonrenewal, Notice of Inactive Status, or Notice of Summary Suspension, which shall contain information about each alleged violation or basis for nonrenewal, inactive status, or summary suspension.



**"Dispatch Service Permit"**: a permit issued by the SFMTA to operate a Dispatch Service in the City.

**"Driver"**: either a person who holds a Driver Permit issued by the SFMTA to operate a Motor Vehicle for Hire or a person engaged in the mechanical operation and having physical charge or custody of a Motor Vehicle for Hire . . .

**"Driver Permit" or "A-Card"**: a permit issued by the SFMTA to operate a Taxi or Ramp Taxi. [The City may issue an *unlimited* supply of A-cards for those who qualify by taking a driver training course and having a Drivers' License.]

**"Driver Training Course"**: a mandatory training course for new or current Drivers that is provided by the SFMTA or is provided by an outside entity and certified in accordance with procedures adopted by the Director of Transportation, to comply with requirements adopted by the Director of Transportation.

**"Full-Time Driver" or "Full-Time Driving"["FTD"]**: 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 fiscal year. [Transportation Code §1109(c) requires medallion holders comply with the FTD requirement – but, the SFMTA staff may suspend this requirement under guidelines set by the SFMTA Board.]

**"Gate Fee"**: any monetary fee or other charge or consideration, or any combination thereof, paid by a Driver who is not a Taxi or Ramp Taxi Medallion Holder for the privilege of driving a Taxi or Ramp Taxi for a daily shift [to serve the public].

**"Hearing Officer"**: an individual designated by the Director of Transportation to conduct hearings under Sections 1117 and 1120 of [Transportation Code 1100 et al.].

**"Medallion"** shall mean a permit issued by the SFMTA to an individual, joint tenants, or a Business Entity to operate a particular Taxi or Ramp Taxi vehicle in the City. [unlike A-Cards, the SFMTA Board issues only a *limited number* of medallions]

**"Medallion Holder"** shall mean the individual, joint tenants, or Business Entity to which a Medallion was issued.

**"Notice of Nonrenewal"** shall mean a notice informing a Permit Holder that the SFMTA has determined that the permit will not be renewed in accordance with Section 1105(a)(5)(B) of this Article.

**"Permit Fee"** shall mean a fee in an amount established by the SFMTA Board, required to be paid by a permit applicant for permit issuance or renewal. . . [all permits must be renewed annually]

**"Permit Holder"** shall mean any person, joint tenants, Business Entity, firm, partnership, association, or corporation which holds *any* permit issued by or under the authority of the SFMTA to drive, operate or cause to be operated any Motor Vehicle for Hire or to operate any Dispatch Service or Color Scheme pursuant to this Article, and any agent of such Permit Holder including, but not limited to, any owner, manager, employee, or lessee of such Permit Holder. (emphasis added)

**"Taxi"** shall mean a vehicle operated pursuant to a Taxi or Ramp Taxi Medallion that is legally authorized to pick up passengers within the City with or without prearrangement, of a distinctive color or colors and which is operated at rates per mile or upon a waiting-time basis, or both, as measured by a Taximeter, and which is used for the transportation of passengers for hire over and along the public streets, not over a defined route but, as to the route and destination, in accordance with and under the direction of the passenger or person hiring such vehicle.

**"Taxi Medallion Sales Pilot Program"** shall mean the former program adopted by the SFMTA Board of Directors for the transfer of certain Medallions at an established price to a Transferee who is qualified to hold a Medallion under this Article.

**"Vehicle Number"** shall mean the unique identifying number associated with each Taxi or Ramp Taxi vehicle.

(See, San Francisco Transportation Code §1102. Definitions.)

1           **I.        BACKGROUND FACTS**

2           Since 1970, Appellant Dirk Neyhart has worked in the taxi industry, first as a permit  
3 holding driver having only an “A-card.” In or around 1989, Mr. Neyhart qualified for and  
4 obtained a “taxi permit” or “medallion,” No. 244. (See, Declaration of Dirk Neyhart, ¶1-2, a true  
5 and accurate copy of which is attached herein as **Exhibit A**.)

6           In 1997, a passenger in Mr. Neyhart’s car stabbed him all over his body and left him for  
7 dead in a pool of blood. (See, Neyhart Decl. ¶3.) After five months of hospital recovery, Mr.  
8 Neyhart discovered that he had been rendered blind. (Id.) His physician reported his condition to  
9 the DMV who immediately revoked his drivers’ license. (See, Neyhart Decl. ¶4.)

10          Without a drivers’ license, Mr. Neyhart was unable to renew his A-card because the City  
11 requires that applicants for an A-card have a valid California drivers’ license. (Id.) However, the  
12 City allowed him to continue renewing his taxi medallion on an annual basis between 1997 and  
13 2006. (See, Neyhart Decl. ¶ 5.) (See also, 1103(c)(2)(C).) As it turns out, the Transportation  
14 Code *does not require* that medallion holders also hold an A-card *or* that they have a license.  
15 See, Transportation Code §1100 et seq.

16          In or around 2006, the City began offering reasonable accommodations under the spirit of  
17 the Americans with Disabilities Act to medallion holders seeking relief from the full-time  
18 driving requirement for reason of disability. Mr. Neyhart applied and qualified for a suspension  
19 of the driving requirement associated with his medallion. The City, through its then-operating  
20 Taxicab Commission “officially” suspended Mr. Neyhart’s full-time driving requirement for  
21 several years in a row, between 2006 and 2008. (See, Neyhart Decl. ¶6.)

22          By 2009, the Taxicab Commission had been legislatively eliminated and its disability  
23 policy no longer existed. Instead, the SFMTA Board, the body that absorbed the duties of the  
24 Taxicab Commission, adopted a new disability policy for medallion holders. On August 24,  
25 2009, the SFMTA Board adopted Resolution No.09-138. (A true and accurate copy of this  
26 resolution is herein attached as **Exhibit B**.) This resolution provides specific guidelines for the  
27 SFMTA staff to allow yearly suspensions of the full-time driving requirement for disabled  
28 medallion holders, such as Mr. Neyhart. The Board’s disability policy contradicts the full-time

1 driving (“FTD”) requirement contained within Transportation Code Division II, §1109(c).  
2 Moreover, this disability policy was never codified within the Transportation Code. It does,  
3 however, remain an SFMTA Board directive.

4         Unfortunately, the SFMTA staff did not notify medallion holders directly about the  
5 disability policy change in 2009 or anytime thereafter. Nor is it easy to research since the online  
6 “Resolutions Log” of the SFMTA Board only dates back as far as 2012. As you can imagine,  
7 plugging in a search for “disability” or “disabled medallion holder” yields nothing at this online  
8 database. Thus, many, like Mr. Neyhart, did not and do not understand their rights and  
9 obligations under the new rules. Mr. Neyhart continued holding a medallion but not driving a  
10 taxicab between 2009-2020 under the assumption that he was still operating his medallion under  
11 a disability driving suspension. In 2020, the SFMTA suspended the FTD requirement for *all*  
12 medallion holders, not just disabled medallion holders, in response to the COVID-19 pandemic.  
13 During this pandemic waiver, SFMTA issued a Notice of Nonrenewal to Mr. Neyhart.

14         In 2010, the SFMTA board announced an initiative allowing disabled taxicab drivers, or  
15 those who had reached age 60, to sell his or her medallion to an authorized purchaser. This  
16 program, the Taxi Medallion Sales Pilot Program, was codified in Transportation Code §1116.  
17 Thereafter, the SFMTA oversaw a program allowing qualified medallion holders to sell their  
18 medallion to the next person on a 3,000 person waiting list of taxicab drivers for \$250,000 each.  
19 Qualified medallion holders received \$200,000, with the remainder going to the City. Mr.  
20 Neyhart did not participate in this program; nor did the anyone from the SFMTA reach out to  
21 him to suggest that he was eligible and should consider it.

22         By 2016, the market for taxicab medallions had dried up, likely as a direct consequence  
23 of the proliferation of the ride-sharing services Uber and Lyft. SFMTA has not issued or sold any  
24 medallions since mid-2016; it has stopped allowing medallion holders to surrender medallions;  
25 and it has ceased retransferring them. Revoked medallions reside in a box at the SFMTA office,  
26 doing no one any good, including the taxi riding public whom are deprived of those taxicabs.  
27 Additional collateral damage includes elimination of cab driver jobs: without a medallion to  
28

1 operate a car as a taxicab, there is no taxicab for a taxi driver to drive. Unused medallions and  
2 fewer taxi drivers needing A-cards to drive them mean fewer annual permit fees are collected by  
3 the City, as well.

## 4 **II. PROCEDURAL BACKGROUND**

5 On November 2, 2020, SFMTA issued a Notice of Nonrenewal to Mr. Neyhart and he  
6 timely requested a hearing. On July 27, 2021, the SFMTA’s Hearing Division heard SFMTA’s  
7 Complaint seeking to revoke Mr. Neyhart’s medallion, purportedly for failure to have an A-card  
8 and drivers’ license. However, here, SFMTA asserted a *legally incorrect* a priori assumption – to  
9 wit, that medallion holders must have an A-card and a drivers’ license in order to be a medallion  
10 holder. Mr. Neyhart isn’t the only disabled medallion holder that SFMTA targeted for revocation  
11 using erroneous law. In 2021, a raft of similar revocations appeared before the SFMTA’s  
12 “neutral hearing officers.” And, several of those hearing officers, using common sense and  
13 consulting with the Board Resolution No. 09-138, decided in favor of the medallion holders.  
14 These “neutral hearing officers” were later strong armed by the City Attorney’s office to issue  
15 “reconsiderations” of their decisions, some of which was captured in an email exchange. The  
16 message was clear: the powers that be instructed the Hearing Officers to rubber stamp these  
17 revocations. (A true and accurate copy of that email exchange is herein attached as **Exhibit C.**)

18 Lest there be any doubt about the limited power of the Neutral Hearing Officer, SFMTA  
19 staff shepherded through the SFMTA board a change to the Transportation Code to strip that  
20 Neutral Hearing officer of any ability to support a disabled medallion holder’s rights. On  
21 September 7, the SFMTA Board approved a critical amendment, that was buried in a 95-page  
22 document. The relevant amendment read thus: “The Hearing Officer’s Notice of Decision may  
23 only uphold or overturn the action sought by the SFMTA and shall not set conditions, establish  
24 special circumstances, establish special remedies or impose other directives. *The Hearing*  
25 *Officer’s authority is limited to the regulations established in Article 1100.” See, Transportation*  
26 *Code 1120(e)(1).* (emphasis added) (A true and accurate copy of the relevant excerpt of this  
27 amendment is attached herein as **Exhibit D.**)

1 As a direct consequence of the Hearing Officer being restricted to the four corners of the  
2 Transportation Code, he could not consider the disability policy enacted by the Board as a  
3 Resolution. Thus, it is no surprise that the Hearing Officer thought that he was forced to uphold  
4 SFMTA’s Complaint against Mr. Neyhart that, itself, rested on a faulty premise as follows:

- 5 • Mr. Neyhart does not hold an A-card; and,
- 6 • Without an A-card, Mr. Neyhart “is not eligible for a Medallion under the Transportation  
7 Code.”

8 On September 9, the Hearing Officer issued his decision to uphold SFMTA’s revocation  
9 of Mr. Neyhart’s medallion. That very same day, the head of the Hearing division, James Doyle,  
10 issued a decision regarding another disabled medallion holder, John Russo, being revoked under  
11 similar circumstances as Mr. Neyhart. In the Russo decision, Hearing Officer Doyle wrote as  
12 follows:

13 “[I]nasmuch as our Hearing Section does not have. . . authority to ignore the explicit  
14 permit renewal provisions of Article 1100 the Transportation Code. . . we have no other  
15 recourse than to follow the existing Transportation Code provisions, regardless of the  
16 equitable considerations that have been outlined here.” (Russo decision, p.5) (A true and  
17 accurate copy of the Russo decision is herein attached as **Exhibit F.**)

18 Unfortunately, Mr. Doyle bought SFMTA’s argument that the Transportation Code requires  
19 medallion holders to have an A-card and license. It does not.

## 20 **II. LEGAL ARGUMENT**

### 21 **A. In Its Sudden Eagerness to Revoke Disabled Medallion Holders, SFMTA Made a 22 Serious Error of Law.**

23 SFMTA’s complaint boldly and inaccurately states as follows:

24 “In order to renew his Medallion, Neyhart must have an active A-Card.”

25 SFMTA then quotes the Transportation Code: “Pursuant to 1105(a)(1), no person shall  
26 operate a Taxi ‘without a permit issued by the SFMTA authorizing such driving or operation.’  
27 (See, SFMTA’s Complaint 2:21-28, a true and accurate copy of which is attached as Exhibit G,  
28 without accompanying exhibits.).

1 The next sentence, while accurate in its own right, is used as obfuscation in this context. It reads  
2 “The permit to drive a Taxi is an A-card.” Appellant agrees that SFMTA has accurately quoted  
3 the Transportation Code here. However, in the process, it has conflated the requirements of being  
4 a taxicab driver with those of being a permit holder generically and that of being a medallion  
5 holder. Indeed, Section 1105(a) relates to its heading: “Conditions Applicable to all Permits.”  
6 More relevant than, “[t]he permit to drive a Taxi is an A-card,” we assert that the proper permit  
7 to operate a medallion is a medallion permit, which Mr. Neyhart holds.

8 SFMTA continues with its confusing argument thus, “ ‘No permit shall be issued unless  
9 the person applying for the permit shall declare under penalty of perjury *his or her intention*  
10 actively and personally to engage as a permittee-driver under any permit issued to him or her.’  
11 [Emphasis added] This provision is codified in 1109(c) (3).” Appellant agrees that this is also a  
12 correct recitation of the Code, though taken out of context.

13 SFMTA then fallaciously concludes as follows, “Here, Neyhart’s A-Card is expired. . .  
14 Without an A-card, Neyhart cannot operate a taxi. If Neyhart cannot operate a taxi, it is not  
15 possible for Neyhart to comply with the terms under which he was granted a Medallion. As a  
16 result, SFMTA issued a Notice of Nonrenewal on or about September 28, 2020.. . Neyhart may  
17 cure this deficiency by renewing his A-Card.”

18 Here, SFMTA has used the words *operate* and *drive* interchangeably – and completely  
19 contorted context - in its argument to confuse the reader. However, we disagree that is how the  
20 Code is written. In fact:

21 **1. Without having an A-card, Mr. Neyhart can *operate* a taxicab, but cannot *drive* it.**

22 Under the Transportation Code, no person shall *operate* a Taxi ‘without a permit issued  
23 by the SFMTA authorizing such *driving or operation*.’ See, Transportation Code 1105(a)(1). As  
24 referenced above, the code here refers to the generic permit (“all permits”). Taxicab permits  
25 comprise: dispatch permits, a color scheme permits, medallion permits, and driver permits. (See,  
26 Definitions, Transportation Code §1102, above.) Dispatch permittees, for instance, primarily  
27 *operate* taxicabs by taking calls from customers and directing taxicabs to the pickup locations  
28 (but, they do not, themselves, drive the vehicles). Color scheme permittees *operate* taxicabs by

1 leasing medallions and cars to drivers, among other operations. Driver permittees (drivers)  
2 *operate* taxicabs by driving them. Medallion permittees *operate* taxicabs like a Chief Operating  
3 Officer, ensuring compliance with all of the regulations. While it is arguably true that medallion  
4 holders also have a FTD requirement of 800 hours per year associated with their permit, that is  
5 not the stated reason that SFMTA seeks to revoke Mr. Neyhart’s medallion. (See, SFMTA’s  
6 Response Brief p. 2: called out paragraph 20-23, a true and accurate copy attached in **Exh. G.**)

7 To be clear: SFMTA seeks to revoke Mr. Neyhart’s medallion because Mr. Neyhart does  
8 not hold an A-card (or a California license), neither of which he is required to have in order to be  
9 a medallion holder.

10 **2. The Transportation Code does not require that Mr. Neyhart have an A-Card (or a**  
11 **CDL) in order to comply with his requirement to submit an annual statement**  
12 **expressing his intention to actively and personally engage as a permittee-driver.**

13 SFMTA also relies upon this statement in the Code to support its fallacious conclusion  
14 that Mr. Neyhart cannot be a medallion holder without having an A-Card:

15 “No permit shall be issued unless the person applying for the permit shall declare under penalty  
16 of perjury *his or her intention actively and personally to engage as a permittee-driver* under any  
17 permit issued to him or her.” Transportation Code §1109(c)(3).

18 Now knowing what we know, that there are several different types of taxicab permits,  
19 seeing this statement in a vacuum, a reader might wonder how this requirement would apply to,  
20 for instance, a Color Scheme permit holder or a Dispatch permit holder. Surely Color Schemes  
21 or Dispatch companies do not have to declare their intend to personally engage as permittee-  
22 drivers, also? Here, we must look at context. The generic use of the word “permit” as used in this  
23 sentence, refers to Medallion Holders because the portion of Code from which this statement  
24 derives is entitled “Conditions Applicable to Medallions.” See, Transportation Code §1109.

25 If the drafters of the Transportation Code meant to require medallion holders to also hold  
26 a drivers’ license or an A-card, there are strong examples contained within the Code on how to  
27 say this. For instance, the Code explicitly requires that each applicant for a Driver’s Permit must  
28 “[h]ave a current California driver’s license.” See, Transportation Code 1103(c )(2)(C). It also



1 says that A-cards are used for “Driver Identification” and that “every driver shall. . . display their  
2 A-Card on the outside of their clothing at all times while operating a Motor Vehicle for Hire.”  
3 See, Transportation Code §1108(a).

4 However, the Transportation Code simply does not require medallion holders to have a  
5 driver’s license or A-Card. Nor has SFMTA cited to such language in the Code. Nor can  
6 SFMTA cite to such a requirement – because it does not exist. Instead, SFMTA would have you  
7 believe that the Code requires that a stated “intention . . . to drive” conflates to a medallion  
8 holder having to have a California Drivers’ License – and/or an A-Card. If the Code wanted to  
9 say that, it has good examples on how to do so. But, that is not what the Code says.

10 **3. Even if the Transportation Code required medallion holders to have an A-Card,**  
11 **which we assert that it does not, SFMTA staff can suspend, have suspended and**  
12 **should suspend annual A-Card renewals and FTD requirements for health reasons.**

13 **a. Staff has explicitly ratified nonrenewal of a disabled medallion holder’s A-card.**

14 SFMTA staff has, in the past, explicitly exempted disabled medallion holder(s) from any  
15 requirement, whether one exists or not, to hold an A-card while on an ADA approved driving  
16 suspension. On March 27, 2017, in an email exchange between taxi medallion holder Charles  
17 Rathbone and SFMTA manager Paige Standfield, Mr. Rathbone asked, “I anticipate that my  
18 doctor will again recommend that I not drive when my current medical modification expires this  
19 summer. In the meantime, do I need to maintain an active A-card as a condition of my holding a  
20 taxicab permit?” In her emailed response, Ms. Standfield replied, “No, if you’re not driving, you  
21 don’t have to renew.” (**Exhibit E**, attached herein, is a true and accurate copy of that email along  
22 with Mr. Rathbone’s notarized declaration, “Rathbone Decl.”)

23 We do not claim that Mr. Neyhart relied on Ms. Standfield’s advice. It is offered only as  
24 an example of a *reasonable accommodation* that staff was and is empowered to make. Mr.  
25 Rathbone continued to rely on that advice for years; and, upon that advice, he did not renew his  
26 A-card. (See, Rathbone Decl. ¶6.)

1           Indeed, if SFMTA staff honestly intends to suspend the full-time driving requirement for  
2 a disabled medallion holder, then it cannot logically *require* that the medallion holder have a  
3 California drivers’ license -- because SFMTA exerts no control over the state of California, who  
4 has its own rules, regulations and procedures that apply to disabled drivers.

5           If a medallion holder is too disabled to drive and thus qualifies for an SFMTA board  
6 approved ADA suspension of the FTD requirement then the person may be so disabled that  
7 DMV revokes their driver’s license. In this case, SFMTA staff did not make a reasonable  
8 accommodation, as required by the SFMTA Board, available (or accessible) to Mr. Neyhart.

9           As a side note, SFMTA staff clearly knows how to reach Mr. Neyhart -- as it did in  
10 serving him with a Notice of Nonrenewal and subsequent Complaint. However, it did not  
11 perform this same outreach in alerting him to his rights and obligations under the previously  
12 available Medallion Sales Program or, the currently available disability accommodation.

13           **b. Health concerns outweighed the FTD requirement during the pandemic.**

14           Starting July 31, 2020 and continuing until December 1, 2021, the SFMTA suspended the  
15 driving requirement for *all* medallion holders “in response to the COVID-19 pandemic.” (See,  
16 [www.sfmta.com/notices/enforcement-full-time-driving-requirement-resuming-12121](http://www.sfmta.com/notices/enforcement-full-time-driving-requirement-resuming-12121)). To be  
17 clear, SFMTA staff readily suspended the driving requirement for medallion holders with  
18 knowledge that the taxicabs would continue to operate, whether or not the medallion holder was  
19 personally driving because of the many A-card holders who primarily drive those taxicabs. Here,  
20 staff suspended the driving requirement for all medallion holders for roughly a year and a half,  
21 underscoring the unimportance of a full-time driving requirement when weighed against the  
22 overriding concern of a medallion holder’s health.

23           **B. The City Has an Interest in Limiting Its Legal Liability.**

24           In *Slone/Merrithew v. Taxicab Commission*, District Court Case No. 08-16726, the  
25 disabled permit holders William Slone and Michael Merrithew claimed that the City had violated  
26 the ADA by giving only limited relief to disabled medallion holders. In 2010, Mr. Slone and  
27 Merrithew entered into a stipulation with the City to drop their appeal of the matter. Instead, Mr.  
28

1 Merrithew agreed to sell his taxicab permit under the then-new and then still viable sales  
2 program that was codified as Transportation Code §1116. Appellant Slone elected to drop his  
3 appeal to instead participate in the 2009 suspension of the full-time driving requirement. (A true  
4 and accurate copy of the 2010 stipulation is herein attached as **Exhibit F.**) This stipulation  
5 signaled the City’s intention to continue offering these programs to future disabled medallion  
6 holders. Unfortunately, these programs range from nonviable to very imperfect.

7 To avoid future liability, it may be time for the City to develop a workable solution that  
8 provides permit holders with viable options – and, to make those options known and accessible  
9 to qualified permit holders – especially prior to taking revocation action against those permit  
10 holders. To be clear, the above-outlined analysis of the serious legal error SFMTA has made in  
11 this matter makes it subject of a doubtless successful Petition for Writ of Mandate to court  
12 should this administrative body not overturn SFMTA’s decision.

13 **IV. CONCLUSION**

14 For the above stated reasons, Appellant respectfully requests that this Board of Appeals  
15 exercise its independent and neutral decision-making authority to carefully analyze SFMTA’s  
16 complaint against Mr. Neyhart *de novo*.

17 We ask that the BOA consult the actual language of the Transportation Code. We are  
18 confident that you will then determine that SFMTA’s Complaint is premised on a serious  
19 mistake of law. On that basis alone, the revocation should be overturned.

20 Further, we ask the Board of Appeals to right an injustice in the spirit of the SFMTA  
21 board’s policy for disabled medallion holders. Resolution No. 09-138 provided guidance to staff  
22 to offer a disability accommodation to Mr. Neyhart, yet he has never had an opportunity to  
23 exercise his rights under this Resolution. Although SFMTA’s Hearing Division no longer has the  
24 legal right to incorporate the SFMTA’s disability policy into its decision-making pursuant to the  
25 September 7 amendment of the Transportation Code, the Board of Appeals can and should do so.

26 DATED: November 10, 2021

27 /s/Heidi Machen  
28 HEIDI MACHEN

Heidi Machen (SBN 184278)  
MACHEN LAW  
345 Franklin Street, Ste. 333  
San Francisco, CA 94102  
Phone: 415-626-1140  
Attorney for Appellant, Dirk Neyhart

DIRK NEYHART,  
Appellant;

v.  
SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AUTHORITY,  
Respondent.

DATE: December 1, 2021

TIME: 5:00 a.m.

PLACE: Via Zoom

CITY AND COUNTY OF SAN  
FRANCISCO

Re: SFMTA's Decision to Revoke Taxi  
Permit ("Medallion") No. 244

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**Exhibit A**, Declaration of Dirk Neyhart, "Neyhart Decl."

**Exhibit B**, SFMTA Disability Policy, 2009

**Exhibit C**, City Attorney email Exchange with Hearing Division of SFMTA

**Exhibit D**, Amendments to Transportation Code, September 7, 2021

**Exhibit E**, Notarized Declaration of Charles Rathbone with email Exchange between Mr. Rathbone and Paige Standfield, 2017.

**Exhibit F**, Hearing Officer Decision Re: John Russo

**Exhibit G**, SFMTA Complaint and Response Brief Re: Revocation of Medallion No. 244 (Neyhart) without accompanying exhibits.

**Exhibit H**, Slone Stipulation with City and County of San Francisco re: Disabled Medallion Holders Rights

# EXHIBIT A

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4 Heidi Machen (SBN 184278)  
Attorney for Dirk Neyhart  
5

6  
7 IN RE THE MATTER OF  
SFTA'S COMPLAINT  
8 AGAINST DIRK NEYHART  
FOR RESCISSION AND  
9 RETURN OF  
MEDALLION #244

**Declaration of Dirk Neyhart**

10  
11  
12  
13  
14  
15  
16 **DECLARATION OF DIRK NEYHART**

17 I, Dirk Neyhart, declare as follows:

- 18 1. Starting in 1970, I first became an A-Card holder and worked as a San Francisco taxi  
19 driver. Straight out of University, I first drove with Yellow Cab and then with Luxor Cab.
- 20 2. In or around 1989, I affiliated my newly awarded medallion with Black and White  
21 Checker then Town Taxi followed by Cityside. Most recently, I affiliated with Yellow Cab Co-  
22 op.
- 23 3. In January 1997, I picked up a guy who stabbed me and left me for dead in a pool of my  
24 own blood. After five months of hospital stay, I was diagnosed as blind and with moderate brain  
injury.
- 25 4. My physician notified the DMV of my condition leading the DMV to revoke my driver's  
26 license. When I sought to renew my A-Card, the clerk refused to allow me to pay for an A-card  
27 with just my California ID. She said that I must have a driver's license; and, her supervisor

1 affirmed that decision. To be clear, my A-Card has been expired since 1998; yet, the City  
2 renewed my taxi permit each year until 2020.

3 5. After 1997, I continued to submit my annual sworn statement to the City declaring my  
4 *intention* to drive, as required to maintain my taxi permit (medallion) each year.

5 6. I do not recall applying for an ADA accommodation, but, upon review of the scant file  
6 that SFMTA produced in response to a records request, I see that I must have applied for it. And,  
7 the City granted me accommodations in 2006, 2007-2008 waiving its driving requirement.

8 7. The City never contacted me after 2008 regarding its revocation of its previously adopted  
9 ADA policy under which I received previous accommodations; or, to inform me of the new  
10 policy.

11 8. Nor did the City invite me to participate in its Medallion Sales Program that I now  
12 understand began the following year, 2010. It is my understanding that this program was intended  
13 to help disabled medallion holders such as myself.

14 9. I would have been eligible for one or the other of the above-noted programs; but, now it is  
15 too late for me to participate in the Medallion Sales Program because the market for medallions is  
16 now non-existent. I have heard that the City has not been able to sell any medallions since around  
17 2016.

18 10. On or around November 2, 2020, I first received notice that the City intended to revoke  
19 my medallion. After several failed attempts to contact someone at SFMTA via phone, I was  
20 finally able to contact the Enforcement and legal Affairs Manager for Taxis and Accessible  
21 Services and we exchanged email in which the Manager thanked me for timely requesting a  
22 hearing. A true and accurate copy of that email is herein attached as Exhibit 1.

23 11. Although I have not received any money for my taxicab medallion for several years, my  
24 identity is tied to being a part of the taxicab industry since 1970; and, thus I ask for an opportunity  
25 to continue holding a medallion.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
27 true and correct. Executed on 7/6, 2021 at Berkeley, California.

28  
  
Dirk Neyhart

# EXHIBIT B



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

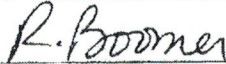
number of hours of driving per day, week or month and/or an assessment of the amount of time that it would take the medallion holder to recover from the condition and resume Full-Time Driving; and

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 04 2009.



Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

# EXHIBIT C

**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

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7/31/2021

**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

7/31/2021

# EXHIBIT D

**THIS PRINT COVERS CALENDAR ITEM NO.: 11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Taxis, Access, and Mobility Services

**BRIEF DESCRIPTION:**

Amending Transportation Code, Division II, Article 300, Section 310 to standardize administrative fines for violations of Article 1100, and amending Transportation Code, Division II, Article 1100, Sections 1102 – 1103, 1105-1110, 1113-1114, 1116, 1118, 1120 and 1124 to continue to reform and modernize taxicab rules and regulations to ensure a high standard of public safety and customer service while updating requirements to better allow innovation and competition.

**SUMMARY:**

- Standardize and streamline the administrative penalty structure, generally grouping fines in three tiers (\$50, \$100 and \$150), and eliminate some fines that are seldom issued.
- Consolidate taxi permit renewal requirements into one section for clarity.
- Clarify that Pre-K Medallions are not eligible for surrender and modify the surrender program to eliminate eligibility for Post-K Medallion holders who are permanently disabled (due to an inconsistency with the fulltime driving requirement), while maintaining eligibility based on age.
- Simplify Ramp Taxi requirements and provide Director of Transportation authority to update certain requirements to allow greater flexibility to adapt to changing conditions.
- Simplify and streamline reporting requirements.
- Clarify the Hearing Officer's authority is limited to the regulations established in Article 1100 and does not include the ability to set conditions or establish special circumstances.
- Establish a fare structure for shared trips and authorize the Director of Transportation to establish a pilot program to test upfront fares.
- Non-substantive clean-up.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Transportation Code Amendments

**APPROVALS:**

DIRECTOR



**DATE**

August 31, 2021

SECRETARY



August 31, 2021

**ASSIGNED SFMTAB CALENDAR DATE:** September 7, 2021

**Section 1114. RECORDS AND REPORTING REQUIREMENTS APPLICABLE TO PERMIT HOLDERS.**

Staff is proposing the following amendments in Section 1114:

- Update the manner in which records may be submitted to SFMTA by adding submission via electronic platform. This will allow the taxi industry to more easily submit reports to SFMTA using a platform such as Salesforce, which is currently in use.
- Update reporting requirements from weekly and semi-annual to upon SFMTA request. This will help alleviate administrative requirements while still providing SFMTA access to reports as needed.
- Expand the requirement to provide camera chips to SFMTA to include all Permit Holders and not just Color Schemes. This provides an important enforcement tool for staff as camera chips are often more accessible via Drivers and Medallion Holders, and the ability to review footage on the camera chips is time sensitive - the current requirement only applies to Color Schemes and it is often more convenient to work directly with drivers.

**Section 1116. TAXI MEDALLION TRANSFER PROGRAM.**

Staff is proposing the following amendments in Section 1116:

- Eliminate eligibility for surrender for consideration for those with permanent disability, as it conflicts with the Full-Time Driving Requirement. Post-K Medallion Holders are subject to the Full-Time Driving Requirement and Board policy allows medical modification of the driving requirement only on a temporary basis, which creates an inconsistency. Staff considered proposing to eliminate the surrender program altogether but decided, based on industry feedback, at this time, to propose more discrete amendments and maintain Post-K Medallion Holder eligibility to surrender based on age.
- Clarify that eligibility for surrender for consideration applies to drivers who have been Full-Time Drivers for four out of the last five years.
- Extend the waiver of the Medallion Transfer Allocation fee from November 2021 to November 2023.

**Section 1118. REVOCATION, SUSPENSION, AND ADMINISTRATIVE FINES.**

Staff is proposing the following amendments in Section 1118:

- Clarify that failure to comply with the Full-Time Driving Requirement is good cause for revocation.
- Add good cause for revocation for drivers who fail to disclose prior convictions that would have precluded them from receiving a Driver Permit.
- Eliminate an outdated reference to Driver Fund, which has been disbursed to drivers and has been dissolved.

**Section 1120. ADMINISTRATIVE HEARINGS.**

Staff is proposing the following amendments in Section 1120:

- Update hearing procedures to include Nonrenewal and Summary Suspension. Update procedures for granting continuances to allow service by email and eliminate the requirement to post the decision online.



- Staff is proposing clarifications to the Hearing Officer's authority to either uphold or overturn a permit action sought by SFMTA and further clarify that the Hearing Officer is not authorized to establish permit conditions or impose special remedies or directives that are not found in Article 1100.
- Eliminate the requirement that hearing decisions be posted online.
- Establish a deadline for Respondents to show good cause for failure to appear at a hearing.

**Section 1124. TAXI FARES AND FEES, GATE FEES.**

Staff is proposing the following amendments to Section 1124:

- Update the timing of hearings before the SFMTA Board regarding updates to meter rates, to provide flexibility to hold the hearings when necessary and not on a set schedule.
- Establish a flat fare for shared rides of \$20 per person. This encourages shared taxi rides and provides an easily understood fare structure.
- Increase the cleaning fee from \$100 to \$150 that Drivers are authorized to charge passengers who soil the interior of a taxi to the extent it must be taken out of service to be cleaned.
- Require the receipt for trips processed by a Driver's credit card payment processing account to include the identity of the Driver so that the customer has this important information if needed.
- Eliminate the gate fee surcharge for low emission vehicles, which is no longer necessary as nearly 96% of the fleet is low emission vehicles.
- Authorize the Director of Transportation to establish a pilot project for "upfront fares" which is intended to test the concept of providing customers with a flat rate fare estimate through an e-hail application. Allowing customers to select a flat rate advance fare will help improve customer service and minimize meter anxiety that occurs when customers feel that drivers may be taking a longer route to increase the fare.

**STAKEHOLDER ENGAGEMENT**

Taxi Services has engaged in a thorough stakeholder engagement process regarding the proposed Transportation Code changes. Given the scale of the proposed amendments, staff worked hard to ensure that there has been significant time for the taxi industry stakeholders to provide input. In continuing effort to remain open and transparent to the industry, staff discussed and elicited feedback related to these legislative changes at meetings, including weekly Color Scheme meetings, held three industry-wide online meetings on from April – June 2021, and conducted survey regarding the out of town trip fare structure. Feedback was accepted via email and staff posted all draft amendments in a red-line version on-line for all interested stakeholders to access and review.

**ALTERNATIVES CONSIDERED**

This legislation is part of an ongoing effort to reform and modernize taxicab rules and regulations. Staff considered a number of alternatives to the medallion reform package, including:

- Eliminate the entire medallion surrender program. In order for a medallion surrender transaction to occur, there must be a buyer. All purchased medallions are prioritized for transfer over surrender transactions. Based upon stakeholder feedback, at this time staff limited proposed amendments to clarify that Pre-K Medallion holders are not eligible for surrender and to

(4) In any hearing, subject to the Hearing Officer's discretion to limit evidence to evidence that is relevant to the proceeding, either party may present its case by means of oral or documentary evidence, may submit rebuttal evidence, and may conduct cross-examination of adverse witnesses.

(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 solely upon the criteria set forth in this Article 1100, include findings, and shall set forth evidence in support of each finding. The Hearing Officer's Notice of Decision may only uphold or overturn the action sought by the SFMTA and shall not set conditions, establish special circumstances, establish special remedies or impose other directives. The Hearing Officer's authority is limited to the regulations established in Article 1100. 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

**EXHIBIT E**

1 Machen Law  
2 345 Franklin Street  
3 San Francisco, CA 94102  
4 HeidiMachen@machenlaw.com  
5 Phone: 415-626-1140

6 Heidi Machen (SBN 184278)

7 IN SUPPORT OF ADA  
8 EXEMPTION TO THE  
9 DRIVING REQUIREMENT  
10 FOR QUALIFIED  
11 MEDALLION HOLDERS

12 **Declaration of Charles Rathbone**

13  
14  
15  
16 **DECLARATION OF CHARLES RATHBONE**

17 I, Charles Rathbone, declare as follows:

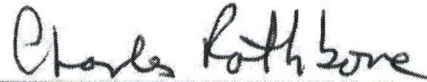
- 18 1. I hold a permit allowing me to operate a taxicab in the City and County of San Francisco.
- 19 2. In 2016, being physically unable to drive, I applied to SFMTA for a full exemption to the  
20 driving requirement under the Americans with Disabilities Act. SFMTA granted me that  
21 exemption. ("ADA exemption").
- 22 3. On March 27, 2017, I contacted Paige Standfield, a manager with SFMTA, via email,  
23 alerting her to the fact that, "I anticipate[d] my doctor w[ould] again recommend that I not drive  
24 when my current medical modification expire[d] this summer." (A true and accurate copy of that  
25 email exchange is herein attached as Exhibit A.)
- 26 4. In that same email, I then specifically asked Ms. Standfield whether I would need to  
27 "maintain an active A-card as a condition of holding a taxicab permit."
- 28 5. Approximately 1.5 hours later, Ms. Standfield replied via the same email thread. In  
relevant part, she said, "No, if

1  
**Declaration**

relevant part, she said, "No, if you're not driving, you don't have to renew."

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6. In reliance on Ms. Standfield's advice, I did not renew my A-card between 2017 and 2020, though I continued to renew my taxicab permit each year without problem. I also continued to apply for and was granted full exemptions from the driving requirement for 2017, 2018 and 2019. In 2020, SFMTA released all medallion holders from the driving requirement in light of the Covid-19; and, so even though I applied for a waiver, I did not hear back from SFMTA and assumed that I was covered under the global exception.

7  
8  
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on JULY 10, 2021 at SAN FRANCISCO, California.

9  
10  


11  
12  
Charles Rathbone

13  
14  
**See Attached  
California Jurat**

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Francisco

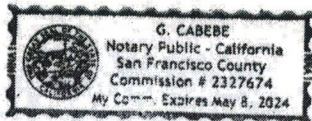
Subscribed and sworn to (or affirmed) before me

on this 10 day of July, 2021  
by Charles Rathbone  
Date Month Year

(and (2) \_\_\_\_\_),  
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature [Signature]  
Signature of Notary Public



Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**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 cipher=GCM-SHA256 bits=128 verify=NOT) for <charles.rathbone@lds.sonic.net>; -0700  
**Received:** from 5pmail.ess.barracuda.com (5pmail.ess.barracuda.com [64.1.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 2017  
**Received:** from SV6EX10MBX1.muni.sfgov.org ([fe80::79a1:35c7:bc:df7]) by SV6EX10CASHUB1.muni.sfgov.org ([:1]) with mapi id 14.03.0195.001; Mon, 27 Mar 2017  
**Thread-Topic:** requested info re: historical medallion issuance  
**Thread-Index:** AQHSo0a8J5yxbJULJEOi3tis16lfvaGjAqmwgAHtdYD//5PZ//pFsg  
**Message-ID:** <D7D44E971C6E12468BF084AC6488B620E3C85E10@SV6EX10MBX1.n>  
**References:** <E3AA1FD17871461B98EA4D1453D2E5AF@DESKTOP0PC>  
<D7D44E971C6E12468BF084AC6488B620E3C8590F@SV6EX10MBX1.n>  
<e1d41532-4754-5120-40c4-cbd901418562@sonic.net>  
<D7D44E971C6E12468BF084AC6488B620E3C85B72@SV6EX10MBX1.n>  
<a3ff-e88e-ead3-2fd1af33b177@sonic.net>  
<D7D44E971C6E12468BF084AC6488B620E3C85C66@SV6EX10MBX1.n>  
<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 ----- 0.00  
 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](mailto: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](mailto:charles.rathbone@sonic.net)]  
**Sent:** Friday, March 24, 2017 4:51 PM  
**To:** Standfield, Paige <[Paige.Standfield@sfmta.com](mailto: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](mailto:charles.rathbone@sonic.net)

# EXHIBIT F

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**  
**SFMTA HEARING SECTION**

**SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY,**

**vs.**

**STATEMENT OF DECISION**

**JOHN RUSSO,**  
Respondent

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**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 John Russo on or about October 15, 2020. The SFMTA Complaint alleges that Mr. Russo 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. Russo on or about September 28, 2020, that his right to remain a medallion holder was being contested by the SFMTA.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Russo by this Hearing Section for July 13, 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 July 13, 2021, Mr. Russo 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. Russo, the Complaint stated that because his A-Card had expired in approximately 2015, and had not been renewed, the medallion # 334 held by Mr. Russo was not eligible to be renewed on the basis relevant provisions of the Transportation Code, Article 1100.

The Taxi Services Complaint also noted that under the provisions of Article 1103(c)(2)(C) of the Transportation Code, a person applying for a permit must have a valid California driver's license as a condition for entitlement to have an A-Card.

### **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 preservation and reliability of the exhibits offered by Taxi Services at the hearing. The exhibits included a driver profile of Mr. Russo (Exh. A), the Division's Notice of Nonrenewal (Exh. B), and an email from Mr. Russo, dated October 7, 2020, contesting the SFMTA's basis for its Notice of Nonrenewal (Exh. C). Mr. Yeung stated that the evidence of record established that Mr. Russo's A-Card had expired in approximately 2015, and had not been renewed since that time.

#### **B. JOHN RUSSO:**

Mr. Russo testified that he continues to be a resident, living in Connecticut since 2015, and that he continues to be disabled due to neurological conditions in his back, and that currently he is not physically capable of driving a taxi cab on a full-time basis.

Mr. Russo testified that as recently as early 2020, his medallion (# 334) had been used by Flywheel Cab, as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that allow the leasing of a medallion holder's permit to a cab company's non-medallion drivers. Generally, Mr. Russo testified that he wants to retain his

medallion as source of retirement income, noting that before the onset of the 2020 pandemic, he had received some modest monthly lease payments of approximately \$300 for the use of his medallion by drivers at Flywheel.

Mr. Russo confirmed that he currently has a Connecticut driver's license, and that he would not be able to obtain a California driver's license unless he was able to come to California, which he is financially unable to do, and particularly during the current pandemic.

Mr. Russo further testified that some years ago he was advised by Paige Stanfield, the Taxi Services manager at that time, that because he was disabled at that time, he did not need to renew his A-Card on an annual basis.<sup>1</sup> Up until that time, he testified that he had kept all of his taxi-related permits current. He also testified that Ms. Stanfield advised him that he could not have a California driver's license while retaining a Connecticut driver's license, because each person is allowed to have only one driver's license at a time.

In addition to the exhibits offered in this case by the SFMTA, the following documents offered by Mr. Russo were reviewed and admitted in the record:

- *Slone v. Taxi Commission*, U.S.C.A, 9<sup>th</sup> Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- *Slone v. Taxi Commission*, U.S.C.A, 9<sup>th</sup> Cir., Stipulation in Support of Motion to Dismiss Appeal, Case No. 08-16726, 8/6/2010
- Email from Paige Stanfield to Chas. Rathbone, 3/27/2017
- Medallion Holders Assn. (MHA), Template of Arguments for Prop. K Medallion Holders, 6/7/2021 (9 pp.)
- Email from John Russo, July 12, 2021

## V. FINDINGS

### A. RESPONDENT RUSSO WITHOUT CALIFORNIA DRIVER'S LICENSE AND CURRENT A-CARD

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent John Russo has not lived in California for at least the past five years and, accordingly, has not been in a position to renew his cab driver's A Card over that length of time. In addition, Mr. Russo does not have a California driver's license, and has no means of moving back to California nor the intention to move here. As a result he is not eligible to obtain a current A-Card as that driver's permit is defined by the SFMTA's Taxi Services.

By his own admission, Mr. Russo can no longer drive a taxi on any sustained basis. Because Mr. Russo 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 cannot hold on to a taxi medallion in

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<sup>1</sup> I note that the email from Paige Stanfield to Charles Rathbone, dated March 27, 2017, does mention that his medical disability exempts him from the requirement to renew his A-Card. That email is part of this record and is accepted into evidence.

San Francisco. On that basis the nonrenewal of this medallion is appropriate here under the circumstances.

## **VI. EQUITABLE CIRCUMSTANCES RELATING TO DECISION**

While current conditions nullify any monetary transfer value of any held medallions in San Francisco, that situation may change in 2021 or 2022, and it remains possible for medallion transfers to someday resume, and 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 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 due to an established fixed price of medallion surrender as set forth in TC §1116(b)—which greatly exceeds the current market price of a local taxi medallion. As long as the litigation continues, the medallion surrender price apparently will remain at \$200,000, based upon the TC §1116 price of a medallion to a new transferee of \$250,000. At this legislatively fixed price, medallion transfers are not expected to occur here until such time as conditions dramatically change, perhaps following the conclusion of the current litigation.

As noted here, there is no indication that the surrender and transferring of medallions will dramatically change as long as the current litigation continues to lock-in the established medallion transfer price. In the meantime, the SFMTA Board of Directors may change the provisions of TC §1116(a)(5), but no such changes to Article 1100 of the Transportation Code will be considered until later this year, or until sometime in 2022.

Until the medallion surrender program is ended by the Board of Directors, TC §1116(a)(1)(A) provides a certain ongoing “eligibility” for the surrender of their medallions to any drivers with disabilities that prevents the full-time driving requirement for both “Pre-K” and “Post-K” medallion holders, as mandated by TC §1116(c)(1). Mr. Russo has testified that he has held a prominent location high on the ‘surrender list.’

Respondent Russo may now be unable to drive a taxi on a full-time basis, and on that basis may someday be a potentially eligible candidate under the current provisions of TC §1116 to surrender his medallion for some 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 cannot continue indefinitely.

On the basis of this apparent 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 defer the revocation of this and other medallions—if provisions within section 1120 of the Transportation Code would have permitted these hearings to be postponed until such time as the MTA Board of Directors has an opportunity to make a definitive decision on the issues of surrender, or until the current litigation between the Federal Credit Union and the SFMTA was resolved to then allow medallion surrender and transfer.

But inasmuch as our Hearing Section does not have the inherent authority to ignore the explicit permit renewal provisions of Article 1100 the Transportation Code, and because there is no current transfer value in any taxi medallion in this jurisdiction, and none on the near horizon, our Hearing Section has determine that in nonrenewal cases of this nature, we have no other recourse than to follow the existing Transportation Code provisions, regardless of the equitable considerations that have been outlined here.

## **VII. ORDER**

By reason of the Findings stated above, the Taxi Services' Notice of Nonrenewal is upheld, and medallion #334 is hereby revoked by the explicit operation of the provisions of the Transportation Code.

Dated this 9<sup>th</sup> day of September, 2021



James Doyle  
Neutral Hearing Officer  
Manager (Acting)  
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.

# EXHIBIT G



1 SAN FRANCISCO MUNICIPAL  
2 TRANSPORTATION AGENCY

3 VS.

4 DIRK NEYHART

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY'S  
COMPLAINT FOR NONRENEWAL  
OF MEDALLION #244 PURSUANT  
TO §1105(a)(5)(B)

5  
6 **INTRODUCTION**

7 The San Francisco Municipal Transportation Agency (SFMTA) submits the  
8 following Complaint against Dirk Neyhart [hereinafter Neyhart], a Post-K Medallion  
9 Holder<sup>1</sup>. The SFMTA, based upon this complaint and the exhibits attached, will show  
10 that it has good cause to issue the Notice of Nonrenewal.

11 **BACKGROUND**

12 Neyhart received Medallion #244 after the effective date of Proposition K (1978)  
13 [hereinafter Prop K] and prior to the Taxi Medallion Sales Pilot Program. Medallions are  
14 a permit issued by the SFMTA to an individual, joint tenants, or a Business Entity to  
15 operate a particular Taxi or Ramp Taxi vehicle in the City. Prop K was a voter passed  
16 initiative that changed the way Medallions were issued and held. Prior to the enactment  
17 of Prop K, Medallion Holders could hold more than one Medallion and they need not be  
18 an active taxi driver. Prop K was designed to put Medallions in the hands of working  
19 drivers. As a condition of renewing their Medallion, Post-K Medallion Holders are  
subject to a Full-Time Driving requirement<sup>2</sup> and they must hold an active A-Card.

20 Neyhart's A-Card is expired. [EXHIBIT A]. After reviewing the renewal  
21 documents submitted for Medallion #244, SFMTA issued a Notice of Nonrenewal to  
22 Neyhart on or about September 28, 2020. [EXHIBIT B].

23  
24  
25 <sup>1</sup> Any capitalized terms that are not otherwise defined herein shall have the meaning ascribed in Article  
1100 of the San Francisco Transportation Code.

26 <sup>2</sup> Full-Time Driving is defined as "any Driver actually engaged in, or the activity comprised of  
27 (respectively) the mechanical operation and physical charge and custody of a Taxi or Ramp Taxi which is  
28 available for hire or actually hired for at least 156 four-hour shifts or 800 hours during a calendar year."  
The Full-Time Driving requirement is currently suspended for the duration of the shelter in place order  
issued by the San Francisco Health Officer. However, the suspension of the Full-Time Driving  
requirement does not relieve Post-K Medallion Holders of the requirement to maintain an active A-Card.

**ARGUMENT**

Pursuant to §1105(a)(5), “Unless earlier revoked or suspended, all permits shall expire one year following their issuance or renewal, or on another date as specified by the SFMTA.” Medallions are issued on an annual basis based upon the fiscal year, and they expire on June 30 of each calendar year. Due to Order C19-07 issued by the San Francisco Health Officer in response to the Covid-19 pandemic, the Medallion expiration date was extended beyond June 30, 2020. As a condition of renewal, “a Permit Holder must pay the applicable Renewal Fee, meet the eligibility requirements required for new applicants listed in Section 1104, and may be required to sign a statement under penalty of perjury affirming eligibility for the permit.”<sup>3</sup>

Under Article 1100, permits are a privilege and are not the property of the Permit Holder [§1105(a)(3)]. Additionally, §1105(a)(6) requires that: “Every Permit Holder shall comply with... the provisions of this Article.”

**A. The Notice of Nonrenewal is final because the request was made by a party other than the Permit Holder**

Pursuant to §1120(a), “a Permit Holder or an applicant who receives an SFMTA... Notice of Nonrenewal under Section 1105(a)(5)(B)... may request a hearing by submitting to SFMTA a request for hearing, in writing, within 20 business days of the date that the Citation, Notice of Denial, Notice of Nonrenewal... was served.” (Emphasis added). Here, the request for hearing was made by the Color Scheme and not by the Medallion Holder. Because the request for hearing was not made by the Medallion Holder, the request was not timely and therefore the Notice of Nonrenewal is final.

**B. In order to renew his Medallion, Neyhart must have an active A-Card**

As noted above, Prop K was a voter approved initiative that reformed the way that Taxi Medallions were issued. Pursuant to the initiative, to qualify for a Medallion, “[t]he applicant will be a full-time driver.” [Proposition K (1978)]. Pursuant to §1105(a)(1), no person shall operate a Taxi “without a permit issued by the SFMTA authorizing such driving or operation.” The permit to drive a Taxi is an A-Card. Prop K also required that “[n]o permit shall be issued unless the person applying for the permit shall declare under

---

<sup>3</sup> The “statement [signed] under penalty of perjury affirming eligibility for the permit” is known colloquially as “annual sworn statement” in the San Francisco Taxi industry.

1 penalty of perjury *his or her intention actively and personally to engage as permittee-*  
2 *driver* under any permit issued to him or her.” [Emphasis added]. This provision is  
3 codified in §1109(c)(3).

4 Here, Neyhart’s A-Card is expired. A search of the ground transportation  
5 management system reveals that Neyhart does not have a profile. [EXHIBIT A].<sup>4</sup> The  
6 system was launched in 2016. When SFMTA reviewed Neyhart’s renewal documents,  
7 staff determined that his A-Card had expired prior to the renewal of his Post-K  
8 Medallion. Without an A-Card, Neyhart cannot operate a Taxi. If Neyhart cannot  
9 operate a Taxi, it is not possible for Neyhart to comply with the terms under which he  
10 was granted a Medallion. As a result, SFMTA issued a Notice of Nonrenewal on or about  
11 September 28, 2020. [EXHIBIT B]. Neyhart may cure this deficiency by renewing his  
12 A-Card.

13 **CONCLUSION**

14 Based upon the expiration of Neyhart’s A-Card, #244 is not eligible for renewal.  
15 SFMTA requests that the September 28, 2020 Notice of Nonrenewal be upheld and the  
16 decision not to renew Medallion #244 is final pursuant to §1105(a)(5)(B).

17 Respectfully Submitted,

18 

19 Date: 11.2.2020

20 Philip Cranna  
21 Enforcement & Legal Affairs Manager  
22 SFMTA Taxi Services

23  
24  
25  
26  
27 <sup>4</sup> Exhibit A is a screen capture of a search for Appellant’s ground transportation management system  
28 (GTMS) driver profile page by the last four digits of his driver’s license. GTMS is the database in which  
SFMTA maintains driver records electronically. For privacy purposes, a redacted version is being  
produced.

1 SAN FRANCISCO MUNICIPAL  
2 TRANSPORTATION AGENCY

3 VS.

4 DIRK NEYHART

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY'S  
RESPONSE BRIEF

5  
6 **ARGUMENT**

7 SFMTA submits this brief in response to Respondent's Brief submitted on July 16,  
8 2021.

9 **A. The Response to the Complaint is not timely**

10 Pursuant to §1120(b)(3), Respondent may submit a written response to the Complaint  
11 "[n]o later than ten *business* days prior to the hearing." (Emphasis added). As the hearing  
12 is set for July 27, 2021, the Response was due no later than July 13, 2021, yet was  
13 submitted on July 16, 2021.

14 **B. Respondent's request for Hearing was timely**

15 This issue is moot. SFMTA withdraws this allegation.

16 **C. In order to renew his Medallion, Respondent must have an active A-Card**

17 Post-K Medallions are subject to the Full-Time Driving requirement as required by  
18 1109(c)(1). The Full-Time Driving requirement was originally imposed as part of  
19 Proposition K (1978). All Medallion subject to the Full-Time Driving requirement must  
20 maintain an active A-Card. Here, Respondent's A-Card is expired, therefore Medallion  
21 #244 is ineligible for renewal.

22 1. **Respondent is not eligible for accommodation under either Slone or the "2009  
23 ADA Program"**

24 Respondent cites a stipulation in *Slone v. Taxi Commission*, noting that one plaintiff  
25 was allowed to sell his Medallion and the other requested an accommodation under the  
26 2009 ADA program. This stipulation does not have the effect of negating the Court's  
27 decision: that the Full-Time Driving requirement is an essential eligibility requirement.  
28

1 Even assuming that Respondent could avail himself of the stipulation, Section 6 of  
2 the Stipulation states that “[i]f he is allowed to consummate a sale of his taxi medallion, it  
3 will have the effect of moot[ing] his appeal because will no longer be a medallion holder  
4 subject to the ‘full-time driving requirement.’” The key word in this section is  
5 *consummate*, as it requires that the Medallion be actually transferred. Until his Medallion  
6 is actually transferred, he is still bound by the essential eligibility requirement as  
7 described in Slone. The stipulation likely assumes that a transaction would occur almost  
8 immediately, otherwise the Medallion Holder would still run afoul of the Full-Time  
9 Driving requirement.

9 Respondent also references SFMTA Board Resolution 09-138, which is the current  
10 policy. Resolution 09-138 states in pertinent part:

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

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

18 Based upon Respondent’s Declaration, his condition is not temporary and thus he is  
19 unfortunately ineligible for an accommodation pursuant to the policy. As the Resolution  
20 states, Medallion Holders who are *permanently* physically incapable for meeting the Full-  
21 Time Driving requirement “may properly be required to relinquish his...medallion to the  
22 SFMTA.”

23 Regardless of the 09-138 rule, which excuses Medallion Holders from the  
24 requirement that they physically drive 800 hours per year, the nonrenewal of Medallion  
25 #244 was based upon the fact that Respondent does not have an A-Card, which by his  
26 own admission he has not held since 1998.

27 2. Respondent has no vested right to surrender for consideration

28 Respondent also alleges that he was not made aware of the Medallion Transfer Pilot  
or the Medallion Transfer Program, and cites §1116(a)(1) as eligibility for Surrender for  
Consideration. Unfortunately, Respondent overlooks §1116(a)(4), which states that  
“[t]his section does not confer on a Medallion Holder a vested right, or other legal

1 entitlement, to surrender a Medallion for consideration.” It is unfortunate that  
2 Respondent was unable to avail himself of the surrender program, but he has no vested  
3 right to surrender his Medallion for consideration as outlined in §1116 and therefore he  
4 was not denied due process.

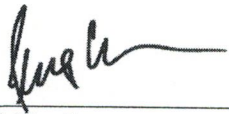
5 3. SFMTA has not waived the requirement that Medallion Holders must have an  
6 active A-Card

7 Respondent provides a five-year old email from the former Permit Manager to Mr.  
8 Rathbone, another Medallion Holder, and cites it as SFMTA policy. The requirement  
9 that Medallion Holders subject to the Full-Time Driving requirement must hold an active  
10 A-Card is set by the SFMTA Board, and this requirement may only be undone by the  
11 Board. Staff does not have the authority to change the Transportation Code. At best, the  
12 email was a discretionary enforcement decision regarding a particular Medallion Holder,  
13 Mr. Rathbone, for that particular year. That Mr. Rathbone relied on that email for several  
14 years is irrelevant to the instant case, as it is not official SFMTA policy. It is  
15 unreasonable to apply this single email to a single Medallion Holder as a program wide  
16 policy.

17 **CONCLUSION**

18 Based upon the expiration of Neyhart’s A-Card, #244 is not eligible for renewal.  
19 SFMTA requests that the September 28, 2020 Notice of Nonrenewal be upheld and the  
20 decision not to renew Medallion #244 is final pursuant to §1105(a)(5)(B).

21 Respectfully Submitted,

22 

23 Date: 7.22.2021

24 Philip Cranna  
25 Enforcement & Legal Affairs Manager  
26 SFMTA Taxi Services  
27  
28

# EXHIBIT H

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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”);<sup>1</sup>

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 mootng 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);

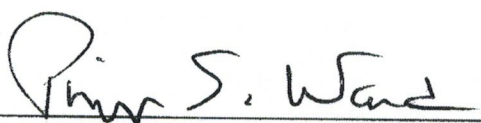
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<sup>1</sup> See September 9, 2009 letter to the Clerk of the Court from the San Francisco City Attorney, and specifically Exhibit A thereto.

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

**BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)**

SAN FRANCISCO BOARD OF APPEALS

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DIRK NEYHART,  
  
Appellant,  
  
vs.  
  
SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY,  
  
Respondent

Appeal No. 21-095  
Medallion Permit No. 244  
**SFMTA TAXI DIVISION’S BRIEF**  
  
Hearing Date: Wednesday, March 2,  
2022  
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. Neyhart (hereinafter Neyhart), holder of Medallion #244, a Post-K Medallion, challenges the decision of the Hearing Officer upholding the SFMTA Taxi Division’s decision not to renew Neyhart’s Medallion.<sup>1</sup> SFMTA issued the notice of nonrenewal based upon the fact that Neyhart did not have a valid A-Card, as required by the Transportation Code.<sup>2</sup> The Hearing Officer’s decision upheld the nonrenewal based upon the requirement that Neyhart hold a valid A-Card and California driver’s license.

**BACKGROUND**

Neyhart received Medallion #244 in 1989, after the effective date of Proposition K (1978) (hereinafter Prop K) and prior to the Taxi Medallion Sales Pilot Program. Medallions are a permit issued by the SFMTA to an individual, joint tenants, or a

<sup>1</sup> Any capitalized terms that are not otherwise defined herein shall have the meaning ascribed in Article 1100 of the San Francisco Transportation Code.

<sup>2</sup> "A-Card" or "Driver Permit" is a permit issued by the SFMTA to operate a Taxi or Ramp Taxi in the City.

1 Business Entity to operate a particular Taxi or Ramp Taxi vehicle in the City. Prop K  
2 was a voter passed initiative that changed the way Medallions were issued and held.  
3 Prior to the enactment of Prop K, Medallion Holders could hold more than one Medallion  
4 and they need not be an active taxi driver. Prop K was designed to put Medallions in the  
5 hands of working drivers. Post-K Medallion Holders are subject to the Full-Time  
6 Driving requirement<sup>3</sup> and they must also hold an active A-Card.  
7

8 Neyhart concedes that he does not currently hold an A-Card, and has not for many  
9 years due to injuries he sustained while operating a taxi. After reviewing the renewal  
10 documents submitted for Medallion #244, SFMTA issued a Notice of Nonrenewal to  
11 Neyhart because he did not have a valid A-Card.  
12

### 13 **SFMTA ENFORCEMENT EFFORT**

14 This appeal is the result of a Notice of Nonrenewal that was sent to Neyhart based  
15 upon his lack of a valid A-Card. This enforcement effort began in 2019 when  
16 enforcement staff was made aware of Medallions that were not in compliance with the  
17 Transportation Code. In total, notices were sent to 257 Medallion Holders involving 316  
18 Medallions.<sup>4</sup> The 316 Medallions included 57 Corporate Pre-K Medallions, 86 Pre-K  
19 Medallions and 173 Post-K Medallions. Of the 316 Medallions impacted, 146 cured their  
20 outstanding issues and were renewed. The holders of 121 Medallions did not respond,  
21  
22  
23

---

24 <sup>3</sup> Full-Time Driving is defined as “any Driver actually engaged in, or the activity comprised of  
25 (respectively) the mechanical operation and physical charge and custody of a Taxi or Ramp Taxi which is  
26 available for hire or actually hired for at least 156 four-hour shifts or 800 hours during a calendar year.”  
27 The Full-Time Driving requirement was suspended at the time that this appeal was filed. In a notice sent  
28 out October 28, 2021, SFMTA announced that enforcement would resume on December 1, 2021.  
<https://www.sfmta.com/notices/enforcement-full-time-driving-requirement-resuming-12121> However, the  
suspension of the Full-Time Driving requirement does not relieve Post-K Medallion Holders of the  
requirement to maintain an active A-Card.

<sup>4</sup> Holders of Pre-K and Corporate Pre-K Medallions may hold multiple Medallions.

1 and the decision not to renew them became final. A total of 49 appeals, including this  
2 pending appeal, were filed. A total of 16 hearings went before the Hearing Officer.

3 Medallions that were issued a notice of non-renewal were out of compliance with  
4 the Transportation Code and are thus not eligible for renewal. As noted above, the  
5 majority of Medallion Holders resolved their issues and successfully renewed their  
6 Medallions. Those that were unable to resolve their compliance issues were either not  
7 renewed or filed an appeal. In this case, Neyhart does not have an A-Card or a California  
8 driver's license, and he is unfortunately unable to secure either. His Post-K Medallion  
9 was originally issued without cost based upon seniority.<sup>5</sup> Because they were issued free  
10 of charge, Post-K Medallions were only issued to active drivers. In exchange, Post-K  
11 Medallion Holders are required to be Full-Time Drivers.  
12

13 If a Post-K holder *never* drives, they are clearly not a Full-Time Driver and are  
14 therefore in violation of the Transportation Code and the rules under which they earned  
15 their Medallion.  
16

17 As regulator, SFMTA made the decision to ensure compliance with the  
18 Transportation Code through this enforcement effort. As mentioned above, a good  
19 portion of Medallion Holders cured any deficiencies and were thus renewed. Only those  
20 that were still out of compliance, such as the Medallion at issue here, are still subject to  
21 non-renewal.  
22

### 23 **ARGUMENT**

24 Pursuant to §1105(a)(5), “Unless earlier revoked or suspended, all permits shall  
25 expire one year following their issuance or renewal, or on another date as specified by the  
26 SFMTA.” Medallions are issued on an annual basis based upon the fiscal year, and they  
27

---

28 <sup>5</sup> Post-K Medallions were issued based upon years of service using a waiting list.

1 expire on June 30 of each calendar year. Due to Order C19-07 issued by the San  
2 Francisco Health Officer in response to the Covid-19 pandemic, the Medallion expiration  
3 date for the 2019-2020 fiscal year was extended beyond June 30, 2020, and Medallions  
4 were allowed to continue operating beyond their usual expiration date.<sup>6</sup>

5 As a condition of renewal, “a Permit Holder must pay the applicable Renewal  
6 Fee, meet the eligibility requirements required for new applicants listed in Section 1104,  
7 and may be required to sign a statement under penalty of perjury affirming eligibility for  
8 the permit.”<sup>7</sup>

9  
10 Under Article 1100, permits are a privilege and are not the property of the Permit  
11 Holder [§1105(a)(3)]. Additionally, §1105(a)(6) requires that: “Every Permit Holder  
12 shall comply with... the provisions of this Article.”

13  
14 **A. The Transportation Code requires Post-K Medallion Holders to have an**  
15 **active A-Card**

16 Appellant argues that Post-K Medallion Holders are not required to hold a valid  
17 A-Card. However, the Transportation Code does require Post-K Medallion Holders to  
18 hold an A-Card, which is a separate requirement from the Full-Time Driving  
19 requirement.

20  
21 There is no dispute that #244 is a Post-K Medallion. As defined in §1102, a Post-  
22 K Medallion is “a Medallion issued to a natural person after June 6, 1978 and prior to the  
23 implementation of the Taxi Medallion Sales Pilot Program on March 28, 2010.” In  
24 conforming language, §1109(c)(1) states that “[e]very Medallion Holder who is a natural  
25 person and who acquired their Medallion between June 6, 1978 and March 27, 2010 shall

26  
27 <sup>6</sup> Medallions are valid during the fiscal year, July 1 to the June 30 of the following year.

28 <sup>7</sup> The “statement [signed] under penalty of perjury affirming eligibility for the permit” is known colloquially as “annual sworn statement” in the San Francisco Taxi industry.



1 be a Full-Time Driver.” As all Post-K Medallions were issued between June 6, 1978 and  
2 March 27, 2010, every Post-K Medallion Holder is a Full-Time Driver and is therefore  
3 subject to the Full-Time Driving requirement. Because Neyhart is a Post-K Medallion  
4 Holder, he is subject to §1109(c)(1).

5  
6 As defined in the §1102, Full-Time Driving and Full-Time Driver have the same  
7 meaning. A key piece of the definition is the word “Driver.” By definition in §1102, a  
8 Driver is “either a person who *holds a Driver Permit issued by the SFMTA to operate a*  
9 *Motor Vehicle for Hire* or a person engaged in the mechanical operation and having  
10 *physical charge or custody of a Motor Vehicle for Hire* while said Motor Vehicle for Hire  
11 is available for hire or is actually hired.” (Emphasis added). By his own admission,  
12 Appellant is neither. Neyhart admits that he does not currently hold an A-Card<sup>8</sup> and he is  
13 unfortunately not capable of engaging in the mechanical operation of a Motor Vehicle for  
14 Hire. Therefore, he is not a Driver under the Transportation Code definition. Because he  
15 is not a Driver, he cannot be a Full-Time Driver. As noted above, Post-K Medallion  
16 Holders shall be Full-Time Drivers. Appellant’s assertion that he can *operate a*  
17 Medallion without *driving* ignores the requirement that he be a Full-Time Driver.

18  
19  
20 **B. The Annual Sworn Statement requires Compliance with the Transportation Code**

21 Pursuant to §1109(c)(3), no Post-K Medallion can be renewed unless the  
22 Medallion Holder to whom such permit was issued declares under penalty of perjury that  
23 they will actively and personally continue to engage in Full-Time Driving. As a Post-K  
24 Medallion Holder, Neyhart must comply with this requirement. In order to actively and  
25

26 \_\_\_\_\_  
27 <sup>8</sup>An A-Card holder “who fails to renew their Driver Permit within the deadline for renewal set by the  
28 SFMTA may renew their Driver Permit upon submission of a new Driver Permit application and completion of all requirements established by SFMTA for such late renewals.” [§1103(c)(3)(C)]. Applicants for an A-Card must have a valid California driver’s license pursuant to §1103(c)(2)(C).

1 personally engage in Full-Time Driving, a Medallion Holder must hold an A-Card, which  
2 Neyhart does not have. §1105(a)(5)(B) also applies to the annual sworn statement.  
3 Specifically, “[a]s a condition of renewal, a Permit Holder must pay the applicable  
4 Renewal Fee,<sup>9</sup> meet the eligibility requirements required for new applicants listed in  
5 Section §1104, and may be required to sign a statement under penalty of perjury  
6 affirming eligibility for the permit.”  
7

8 To verify whether an applicant meets the eligibility requirements of §1104,  
9 SFMTA is required to investigate an applicant’s “compliance with all applicable statutes,  
10 ordinances and regulations.” The annual sworn statement itself includes language, which  
11 by signing Appellant declared that he was in compliance with the Transportation Code  
12 (see Exhibit A):  
13

14 I (We) hereby declare that I have not committed any violations that would  
15 constitute grounds for revocation of my permit under San Francisco  
16 Transportation Code Section 1118. I (We) further declare under penalty of  
17 perjury under the laws of the State of California that the information provided on  
18 this form, attached explanations where applicable and any attachments hereto, are  
19 true and correct.

20 Despite this declaration, Neyhart is not in compliance.

21 **C. The Requirement that Post-K Holders Maintain an A-Card was never**  
22 **suspended**

23 Appellant is correct that that SFMTA temporarily suspended the Full-Time  
24 Driving requirement between July 31, 2020 and December 1, 2021. Given the impact of  
25 the pandemic, SFMTA undertook many efforts to support the San Francisco Taxi  
26 industry, from automatically extending permit validity, to providing personal protection  
27

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28 <sup>9</sup> All Taxi-related fees are currently waived.

1 equipment including taxi barriers, modifying insurance requirements and many other  
2 measures.<sup>10</sup> However, that suspension has since been lifted.

3         The temporary suspension of the requirement to drive 800 hours is vastly different  
4 from suspending the requirement that a Post-K Medallion Holder maintain a valid A-  
5 Card. If SFMTA did what Appellant suggests in suspending the A-Card requirement,  
6 such a temporary suspension would also likely be lifted by now, which would do nothing  
7 to change his circumstances. By temporarily suspending the Full-Time Driving  
8 requirement, SFMTA was seeking to avoid the situation where Medallion Holders were  
9 forced to drive during the height of the pandemic. It is unclear what benefit a *temporary*  
10 suspension of the requirement to hold an A-Card would have for Post-K Medallion  
11 Holders, particularly if that suspension, like the suspension of the Full-Time Driving  
12 requirement, was also now lifted.  
13  
14

15         Neyhart cites *Slone v. Taxi Commission* (N.D. Cal. Case No. C 07-03335 JSW  
16 June 30 2008) 2008 WL 2632101, which held that Proposition K imposed the Full-Time  
17 Driving requirement. After the City had already prevailed on a Motion for Summary  
18 Judgment, the two plaintiffs entered into a stipulation which allowed one to participate in  
19 the Taxi Medallion Sales Pilot Program, and the other was allowed to subject himself to  
20 what the stipulation referred to as the “MTA’s 2009 policy.” (see Appellant Exhibit F).  
21 The 2009 policy was SFMTA Board Resolution 09-138, which was passed on August 4,  
22 2009, and is still current policy. (Exhibit B).  
23  
24  
25  
26

---

27 <sup>10</sup> A list of efforts can be found at [https://www.sfmta.com/sfmta-supports-taxi-industry-during-pandemic-](https://www.sfmta.com/sfmta-supports-taxi-industry-during-pandemic-march-2021)  
28 [march-2021](https://www.sfmta.com/sfmta-supports-taxi-industry-during-pandemic-march-2021)

1 Resolution 09-138 established what is known colloquially as “medical  
2 modification” of the Full-Time Driving requirement. However, a critical component of  
3 the Resolution is that any modifications are only *temporary*. In fact, the word  
4 “temporary” appears twelve times in Resolution 09-138. The key passages that are  
5 relevant for this appeal are:

6  
7 WHEREAS, A medallion holder should be relieved of the Full-Time Driving  
8 requirement for limited periods of time during which the medallion holder is  
temporarily rendered physically incapable of driving; and,

9 WHEREAS, By contrast, a medallion holder who is permanently physically  
10 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;

11 Neyhart is permanently physically incapable of meeting the Full-Time Driving  
12 requirement and will not be able to return to Full-Time Driving. Therefore, he is  
13 unfortunately not entitled to the temporary relief established by Resolution 09-138, and  
14 according to the policy “may properly be required to relinquish his...medallion to the  
15 SFMTA.” Neyhart suffered a catastrophic injury in 1997 that rendered him permanently  
16 unable to drive. He was allowed to renew his Medallion every year until 2020, when the  
17 undersigned learned that he, like 256 other Medallion Holders, was not in compliance.  
18 His Medallion should not have been renewed, and the fact that prior staff may have  
19 renewed it is not ratification because SFMTA staff do not have the authority to supersede  
20 or overrule SFMTA Board authority.  
21  
22

23 That Neyhart was unaware of Resolution 09-138 is irrelevant, because he is not  
24 eligible for relief under the policy, and, as noted above, would be required to return his  
25 Medallion under that policy. For reasons that are unclear, he was also unaware of the  
26 Medallion Sales Program, but he is unfortunately not entitled to receive consideration.  
27  
28

1 §1116(a)(4) clearly states that the program “does not confer on a Medallion Holder a  
2 vested right, or other legal entitlement, to surrender a Medallion for consideration.”

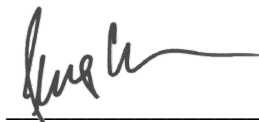
3 **CONCLUSION**

4  
5 As part of an enforcement initiative, SFMTA made the regulatory decision to  
6 enforce compliance with the Transportation Code during the 2020 permit renewal  
7 process. As mentioned above, many Medallions that were subject to non-renewal cured  
8 their deficiencies and successfully renewed their Medallions. Neyhart had the  
9 opportunity to cure any deficiencies, but he cannot unfortunately because he cannot  
10 renew his driver’s license. Holding a California driver’s license is a requirement to hold  
11 an A-Card, and Post-K Medallion Holders are required to have an active A-Card.  
12 Because he does not have an active A-Card, Neyhart’s Medallion is not eligible for  
13 renewal.  
14

15 As difficult as these circumstances are, if the Board of Appeals votes to grant this  
16 appeal, it will have the effect of renewing a permit that is not eligible for renewal. The  
17 impact of such a decision will undermine and potentially impede SFMTA’s ability to  
18 exercise its authority under the Charter to regulate the operation of taxis in San Francisco  
19 and enforce the requirements of the Transportation Code.  
20

21 For the foregoing reasons, the Board of Appeals should deny appeal of the  
22 decision upholding the Taxi Division’s nonrenewal of Neyhart’s Medallion.

23 Respectfully Submitted,

24 

25 Date: 2.24.2022

26 Philip Cranna  
27 Enforcement and Legal Affairs Manager  
28 Taxis, Access & Mobility Services Division  
San Francisco Municipal Transportation Agency

## **EXHIBIT LIST**

EXHIBIT A Annual Sworn Statement 4/30/20

EXHIBIT B Resolution 09-138 8/4/2009

# **EXHIBIT A**



# 2020 Annual Sworn Statement for Medallion Holder Transferable & Post-K

In compliance with the provisions of SFMTA Transportation Code, Division II, Article 1100 § 1114(c), the undersigned Taxi Medallion Holder(s) hereby makes a sworn statement as follows:

### PART 1

Do you have any other permits or licenses from other governmental bodies relating to the operation of Motor Vehicles for Hire?

Yes (If Yes, you must attach copies of such permits or licenses)  No

### PART 2

I (We) holder(s) of medallion no. 244, hereby declare that all drivers driving this medallion that are mandated by the State of California to be covered by "Worker's Compensation" insurance, are so covered.

I (We) and all those operating under this medallion are also in compliance with appropriate California and City and County of San Francisco laws pertaining to proper driver licenses, all pertinent rules adopted by the SFMTA Taxi Services, the SFMTA Transportation Codes, all applicable San Francisco Municipal Police Code sections, all California Vehicle Codes, all California Workers' Compensation Laws and Regulations, and all other pertinent local, state and federal laws applicable to the operation of a taxicab.

Medallion Number(s): 244 Social Security Number (Last 4 Digits) [REDACTED]

Medallion Holder(s) Name(s): Dirk Neyhart

Residence Address of Medallion Holder: [REDACTED] Berkeley CA 94702  
A P.O. Box is not permitted Street City State Zip

Mailing Address if different from above: \_\_\_\_\_  
Street City State Zip

Taxi Company Name: Yellow Cab SF Taxi Company Phone: (415) 333-3333

Taxi Company Address: 531 Bayshore Blvd San Francisco CA 94124  
Street City State Zip

Residence Phone: (510) [REDACTED] Cellular Phone: ( )

Medallion Holder Email Address: [REDACTED]  
Print legible. If none, write "None"

Write the names of all taxi companies that your medallion has been associated with in the last five (5) years:

Yellow Cab San Francisco

### PART 3

I (We) hereby declare that I have not committed any violations that would constitute grounds for revocation of my permit under San Francisco Transportation Code Section 1118. I (We) further declare under penalty of perjury under the laws of the State of California that the information provided on this form, attached explanations where applicable and any attachments hereto, are true and correct.

Executed on 4/30/2020 at Berkeley, California  
Date City, State

Medallion Holder(s): \_\_\_\_\_  
Signature (First Named Medallion Holder)

Dirk Neyhart  
Print Name

R [REDACTED] 0557

RECEIVED  
Signature (Second Named Medallion Holder)

MAY 5 2020

Print Name SFMTA Division of Taxicab & Accessible Services

SF

CA Driver License Number Expiration Date San Francisco Municipal Transportation Agency | South Van Ness Avenue, 7<sup>th</sup> Floor | CA Driver License Number Expiration Date San Francisco, CA 94103 SFMTA.com



**EXHIBIT B**

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 04 2009.



Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency