

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxi and Accessible Services

BRIEF DESCRIPTION:

Making certain modifications to the Powered Scooter Share Program (Program) including extending the duration of the current permits by six months to April 2021 to respond to changes resulting from the COVID-19 pandemic by suspending the requirement in Section 916(a)(2) of the Transportation Code, Division II, that the duration of Program permits be up to one year; amending Section 916(e) of the Transportation Code, Division II, to clarify the standard governing review of permit decisions to retain the Director's authority to issue or deny permits; and, amending Sections 916(g) and (h) of the Transportation Code, Division II, to update cross-references to Division I, Section 7.2.110, for violations of the program warranting issuance of administrative penalties.

SUMMARY:

- The proposed action will modify the 2019-2020 Powered Scooter Share Program permits, authorizing the Director of Transportation, or his designee, to extend the term of current permits by six months to April 2021, to allow permittees time to recover from the emergency shutdown and expand as part of the SFMTA's Transportation Recovery Plan, while giving staff time to analyze the transportation landscape as it emerges into a new stasis, rather than embark on a new permit program during such a time of uncertainty.
- The proposed amendments to Section 916 of the Transportation Code, Division II, clarify the standard governing review of permit decisions and update the references for violations of the program warranting issuance of administrative penalties.

ENCLOSURES:

1. SFMTAB Resolution
2. Transportation Code Division II amendment

APPROVALS:

DIRECTOR 

DATE

August 10, 2020

SECRETARY 

August 10, 2020

ASSIGNED SFMTAB CALENDAR DATE: August 18, 2020

PURPOSE

Making certain modifications to the Powered Scooter Share Program (Program) including extending the duration of the current permits by six months to April 2021 to respond to changes resulting from the COVID-19 pandemic by suspending the requirement in Section 916(a)(2) of the Transportation Code, Division II, that the duration of Program permits be up to one year; amending Section 916(e) of the Transportation Code, Division II, to clarify the standard governing review of permit decisions to retain the Director’s authority to issue or deny permits; and, amending Sections 916(g) and (h) of the Transportation Code, Division II, to update cross-references to Division I, Section 7.2.110, for violations of the program warranting issuance of administrative penalties.

STRATEGIC PLAN GOALS & TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 1 - Create a safer transportation experience for everyone.

Objective 1.2: Improve the safety of the transit system.

Objective 1.3: Improve security for transportation system users.

Goal 2 - Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.2: Enhance and expand use of the city’s sustainable modes of transportation.

Goal 3 - Improve the quality of life and environment in San Francisco and the region.

Objective 3.1: Use agency programs and policies to advance San Francisco’s commitment to equity.

Objective 3.3: Guide emerging mobility services so they are consistent with sustainable transportation principles.

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Within San Francisco, travel by public transit, by bicycle, by micro-mobility, and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

SFMTA’s Powered Scooter Share Program

The current Powered Scooter Share Permit Program incorporates lessons learned from the 12-month Powered Scooter Share Pilot as well as the City's 18-month Stationless Bikeshare Permit Program to create a more useful, safe, and equitable citywide program. It provides stronger guidance and clearer requirements around key issues such as the distribution of devices, operational sustainability, community engagement processes and data sharing and accountability standards.

As directed in the 2019-2020 Powered Scooter Share Permit Program memorandum dated September 27, 2019, the current Powered Scooter Share Program began on October 15, 2019. The SFMTA issued permits to four companies, Spin, Scoot, Lime and Jump to operate for a one-year term, beginning October 15, 2019.

Key requirements of the Powered Scooter Share Program include:

- All scooters must have a lock-to device
- Clear parking guidelines and parking enforcement
- Complaints database
- Low income plan
- Bike rack fee
- Adaptive Scooter Pilot
- Community Engagement Plan
- Labor Harmony Provision

On February 25, 2020, the Mayor declared a local emergency in response to the COVID-19 pandemic, issuing a Proclamation of the Mayor Declaring the Existence of a Local Emergency (COVID-19 Emergency). On March 16, 2020, San Francisco's Health Officer issued a Public Health Order in response to the COVID-19 Emergency, requiring that residents remain in place, with the only exception being for essential needs (Shelter in Place Order or SIP).

All permittees are currently authorized to operate up to 1,000 devices. From the beginning of the program until the Shelter in Place went into effect (October 15, 2019 through March 16, 2020), on average there were a total of 6,700 rides taken per day.

With the SIP in effect, Powered Scooters were deemed to be an essential service and were therefore able to continue operations. Of the four permittees, only Spin continued operations throughout the entire period, although Lime and Scoot have recently resumed operations. The impact of the SIP resulted in a 90% drop in total rides, down to about 730 scooter rides/day.

The widespread effects related to the COVID-19 Emergency have drastically affected all modes of transportation, including personal vehicles, transportation network companies, public transportation and the taxi industry. Most estimates report revenue across all transportation modes are down approximately 90%.

Proposed Suspension of Section 916(a)(2)

Under Section 916(a)(2) of Division II of the Transportation Code, scooter permits shall be valid up to one year. Due to the impact of the COVID-19 Emergency on the transportation sector,

SFMTA staff recommends that the Board suspend the requirement in the Transportation Code, and authorize the Director of Transportation, or his designee, to extend the Powered Scooter Share Program permit terms by six months, until April 2021. The proposed suspension of Section 916(a)(2) of the Transportation Code will allow the program to stabilize under the current conditions, expand under new Distribution Guidelines, as described below, in alignment with SFMTA's Transportation Recovery Plan, and give staff the opportunity to analyze the Powered Scooter Share Program as it emerges into a new stasis, rather than embark on a new permit program during such a time of uncertainty. The extended permit term will also allow staff to conduct community engagement to inform the new permit program, which would be extremely difficult to do at the current moment, when staff time is focused on the emergency response and engaging in Disaster Service Work. Community engagement will be more meaningful as ridership resumes and new travel patterns emerge.

The proposed extension of the existing Powered Scooter Share Program permit term by six months also will allow the current permittees to continue to operate given the disruption of services created by the COVID-19 Emergency and resulting SIP orders. As a result of the shutdown, three of the four scooters companies suspended operations, the permit extension would help them stabilize their businesses. Additionally, the total number of permittees is in flux, as Lime has recently acquired JUMP. The acquisition is under review and must be approved by the Director of Transportation in writing prior to the permit transfer.

Section 916. Powered Scooter Share Program Technical Revisions.

Staff also is proposing clarifications to Section 916 of the Transportation Code. First, staff propose to clarify the standard governing the review process of SFMTA decisions to grant or deny a permit. The clarification provides more detail on what the substantial evidence standard entails including clarifying that, on appeal, the neutral hearing officer may either deny the appeal or order reconsideration by the Director of Transportation or designee in light of the hearing officer's decision, but the Director retains the discretion to issue or deny permits. Second, staff is proposing administrative revisions regarding administrative penalties under the program. Currently, the provisions reference Division I, Section 7.2.111, as a basis for violations of the program. However, when the SFMTA Board and Board of Supervisors enacted the Shared Mobility Device Service Permit Requirements last year, that provision was repealed. The current provision that addresses violations of the program, and basis for imposing administrative penalties, is Section 7.2.110 of Division I of the Transportation Code. The proposed amendment will update the cross-references in Sections 916(g) and (h) to Section 7.2.110.

Updated Powered Scooter Share Distribution Guidelines

In addition to the proposed Transportation Code amendments, staff has included a brief update on the Scooter Share program in this report. Under Director of Transportation authorization, SFMTA recently issued updated Powered Scooter Share Distribution Guidelines, including metrics to allow for fleet expansion. The updated Distribution Guidelines are intended to create the conditions for safe and equitable Powered Scooter Share expansion that aligns with SFMTA's Transportation Recovery Plan. The revised expansion guidelines will allow Scooter Share permittees to serve more neighborhoods and provide a higher level of service, while

maintaining a focus on equity, safety, rider accountability, service quality, and customer service. Allowing for safe and equitable Scooter Share expansion is particularly important at this time as San Francisco emerges from the Public Health Officer's Order issued on March 16, 2020 requiring that residents remain in place, with the only exception being for essential needs. Micromobility will play an increasingly significant role in the transportation network, at this time. The updated Distribution Guidelines have been incorporated into the permits. Additionally, while all Scooter Share permittees have submitted cleaning plans, as required by the Permit Terms and Conditions, because this issue has clearly taken on even more significance in light of the COVID-19 pandemic, staff is soliciting additional guidance from the SFMTA's Departmental Operations Center and other City partners. Permittees will be required to update their plans, as applicable, based on any additional guidance.

STAKEHOLDER ENGAGEMENT

Staff solicited feedback from key stakeholders about the proposed six-month permit term extension, and generally the response was positive, although there were some comments not supportive of the extension. Mainly the key concerns raised were about the safety of scooter share operations and the need for enforcement. Enforcement is a key element of the scooter share program and will be particularly emphasized throughout the term of the permit and particularly as scooter fleets expand.

ALTERNATIVES CONSIDERED

Alternatives considered include allowing the current permit program to expire at the end of the current permit term in October 2020, but given the massive upheaval to the entire transportation system, and the Powered Scooter Share program specifically, resulting from the COVID-19 Emergency, this was not considered a viable option. The proposed legislative changes are technical in nature and staff does not recommend the alternative of leaving the code in its current form.

FUNDING IMPACT

The financial impact of the SFMTA of the proposed amendment is expected to be minimal. The Powered Scooter Share annual permit fee is \$36,613. The six-month permit extension permit fee will be prorated at \$18,306.50.

ENVIRONMENTAL REVIEW

On June 26, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Transportation Code legislation is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None. The City Attorney has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board makes certain modifications to the Powered Scooter Share Program (Program) including extending the duration of the current permits by six months to April 2021 to respond to changes resulting from the COVID-19 pandemic by suspending the requirement in Section 916(a)(2) of the Transportation Code, Division II, that the duration of Program permits be up to one year; amends Section 916(e) of the Transportation Code, Division II, to clarify the standard governing review of permit decisions to retain the Director's authority to issue or deny permits; and, amends Sections 916(g) and (h) of the Transportation Code, Division II, to update cross-references to Division I, Section 7.2.110, for violations of the program warranting issuance of administrative penalties.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The current Powered Scooter Share Program for 2019-2020 began on October 15, 2019. The SFMTA issued permits to four companies, Spin, Scoot, Lime, and Jump to operate for a one-year term, beginning October 15, 2019; and,

WHEREAS, The current Powered Scooter Share Permit Program incorporates lessons learned from the 12-month Powered Scooter Share Pilot as well as the City's 18-month Stationless Bikeshare Permit Program to create a more useful, safe, and equitable citywide program with stronger guidance and clearer requirements around key issues such as the distribution of devices, operational sustainability, community engagement processes, and data sharing and accountability standards; and,

WHEREAS, On February 25, 2020, the Mayor declared a local emergency in response to the COVID-19 pandemic and issued the Proclamation of the Mayor Declaring the Existence of a Local Emergency (COVID-19 Emergency) and on March 16, 2020, San Francisco's Health Officer issued a Public Health Order in response to the COVID-19 Emergency, requiring that residents remain in place, with the only exception being for essential needs (Shelter in Place Order or SIP); and,

WHEREAS, With the SIP in effect, Powered Scooters were deemed to be an essential service and were therefore able to continue operations, but only one permittee continued operations throughout the entire period and scooter share trips declined about 90%; and,

WHEREAS, The Director of Transportation recently issued a new policy directive with updated requirements for scooter fleet expansion to ensure that, as scooter share expands, the City will be served equitably; and,

WHEREAS, Staff has determined that a six-month permit term extension will allow Scooter Share Permittees time to recover from the emergency shutdown, to expand as part of the MTA's Transportation Recovery Plan, and give staff the opportunity to analyze the transportation landscape as it emerges into a new stasis, rather than embark on a new permit program during such a time of uncertainty; and,

WHEREAS, The California Environmental Quality Act (CEQA) applies to "projects" that have the potential for resulting in either a direct physical change in the environment, or a reasonable, foreseeable indirect change in the environment; and,

WHEREAS, On June 26, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the proposed Transportation Code legislation is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors suspends the requirement in Transportation Code, Division II, Section 916(a)(2), that the duration of Powered Scooter Share Program permits be up to one year, and authorizes the Director of Transportation, or his designee, to extend the current permits by six months to April 2021 to respond to changes resulting from the COVID-19 emergency; and by it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors amends Transportation Code, Division II, Section 916(e), to clarify the standard governing review of permit decisions to retain the Director’s authority to issue or deny permits, and amends Transportation Code, Division II, Sections 916(g) and (h), to update cross-references to Division I, Section 7.2.110, for violations of the program warranting issuance of administrative penalties.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 18, 2020.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

RESOLUTION NO.

[Transportation Code – Powered Scooter Share Program]

Resolution amending Division II of the Transportation Code to clarify the standard governing review of permit decisions under the Powered Scooter Share Program and update outdated cross-references to provisions of Division I of the Transportation Code addressing violations of the Powered Scooter Share Program; and authorizing, on a one-time basis, suspension of the requirement that the duration of Powered Scooter Share Program permits be up to one year and extension of the current permits issued in October 2019 by six months to account for changes in the program due to the COVID-19 pandemic.

NOTE: Additions are single-underline Times New Roman;
deletions are ~~strike-through Times New Roman~~.

The Municipal Transportation Agency Board of Directors of the City and County of San Francisco enacts the following regulations:

Section 1. Article 900 of Division II of the Transportation Code is hereby amended by revising Section 916, to read as follows:

SEC. 916. POWERED SCOOTER SHARE PROGRAM

* * * *

(e) Powered Scooter Share Program Permit Issuance.

(1) After evaluating an applicant's permit application, the Director of Transportation shall either grant the Permit as requested, grant the Permit with modifications, or deny the Permit. Where the Permit is granted with modifications or denied, the notice shall explain the basis for the Director of Transportation's decision. An applicant may request review of the Director of Transportation's decision to deny a permit or grant a permit with modifications. Review of the Director's decisions will be

conducted under the substantial evidence standard. The Director shall issue procedures governing review of these decisions by a neutral hearing officer ~~third party~~. In applying the substantial evidence standard, the neutral hearing officer shall not reweigh the evidence. The hearing officer may either deny the appeal or order reconsideration by the Director of the matter in light of the decision, but the order shall not limit or control in any way the discretion legally vested in the Director to issue permits.

(2) Notwithstanding any other requirement, the Director of Transportation has the authority to deny a permit based on the extent to which issuing a permit would lead to an over-concentration of shared Powered Scooters in the public right-of-way, cause an imbalance in the geographical distribution of scooters that are part of the Powered Scooter Share Program, or otherwise not be in the public interest.

* * * *

(g) Administrative Penalties Applicable to Powered Scooter Share Program Operators.

(1) Any Powered Scooter Share Program Operator who violates Division I, Section 7.2.110~~Section 7.2.111~~ of this Code is subject to the issuance of a citation and imposition of an administrative penalty.

(2) Any Powered Scooter Share Program Operator who violates one or more conditions of a permit issued under this Section 916 is subject to the issuance of a citation and imposition of an administrative penalty.

(3) Administrative penalties may not exceed \$500 for each offense.

(4) In addition to other designated employees, the Director of Transportation is authorized to designate officers or employees of the Municipal Transportation Agency to enforce Division I, Section 7.2.110~~Section 7.2.111~~ of this Code. Any officer or employee so designated is hereby authorized to issue citations imposing administrative penalties for violations of Division I, Section 7.2.110~~Section 7.2.111~~.

(h) Procedure for Assessment and Collection of Administrative Penalties.

(1) This subsection (h) shall govern the imposition, assessment, and collection of administrative penalties imposed pursuant to subsection (g).

* * * *

(3) Administrative Citation. Where a designated officer or employee determines that there has been a violation of Division I, Section 7.2.110~~Section 7.2.111~~ of this Code, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. The citation may be personally served on the applicant or served by certified U.S. mail to the last known address for the Powered Scooter Share Operator. The citation shall state the date and nature of the violation and the amount of the administrative penalty and shall state that the penalty is due and payable to the SFMTA within 15 business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, under subsection (h)(4), to request an administrative hearing of the determination as to the violation and assessment of penalties and shall set forth the procedure for requesting an administrative hearing. The designated officer or employee shall mail the administrative citation and evidence supporting the determination of a violation to the last known address for the Powered Scooter owner.

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Section 2. The COVID-19 pandemic, as referenced in the Proclamation of the Mayor Declaring the Existence of a Local Emergency dated February 25, 2020 (COVID-19 Emergency), resulted in a sharp decline in usage of Powered Scooters and caused some Powered Scooter Share permittees to suspend business operations. Thus, to respond to these changes resulting from the COVID-19 Emergency, the Director of Transportation or his designee is authorized on a one-time basis to suspend Section 916(a)(2) of the Transportation Code, Division II, that the duration of Powered Scooter Share Program permits be up to one year, and extend the current permits issued in October 2019 by six months to April 2021.

Section 3. Effective Date. This ordinance shall become effective 31 days after enactment. Enactment occurs when the San Francisco Municipal Transportation Agency Board of Directors approves this ordinance.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The SFMTA Board of Directors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 5. Scope of Ordinance. In enacting this ordinance, the San Francisco Municipal Transportation Agency Board of Directors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Transportation Code that are explicitly shown in this ordinance as additions or deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
JULIE VEIT
Deputy City Attorney

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I certify that the foregoing resolution was adopted by the San Francisco
Municipal Transportation Agency Board of Directors at its meeting of August 18, 2020.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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Archived on August 25, 2020

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