Carroll, John (BOS)

From: Board of Supervisors, (BOS)
Sent: Tuesday, April 03, 2018 9:06 AM
To: Somera, Alisa (BOS); Carroll, John (BOS)
Subject: FW: Item 30. 171210: Please address the following matters regarding Chariot and other PTV companies.
Attachments: Current Chariot operations are largely based on violations of the law 03-18-2018 (1).pdf.pub; Mounsey-v-CCSF-CGC-12-525348.pdf; Chariot double parks on California at Presidio 11-28-2017 7-21 a.m..jpg; Chariot in GG Transit Bus Stop on Fremont at Market_ 04-22-2016.jpg; Chariot in Muni stop on Van Ness at Market_ 09-25-2017.jpg; Chariot 227 stopped at driveway on California at Arguello 01-26-2018.jpg; Chariot van in Howard Street bicycle lane.jpg

Categories: 171210

It was sent to the full Board ☺

From: Sue Vaughan [mailto:selizabethvaughan@gmail.com]
Sent: Monday, April 02, 2018 10:02 PM
To: Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Sheehy, Jeff (BOS) <jeff.sheehy@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
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Subject: Item 30. 171210: Please address the following matters regarding Chariot and other PTV companies.

Dear Supervisors,

During your discussion of Item 30. 171210 [Transportation Code -- Non-Standard Vehicle Permits] please:

1) acknowledge the lawlessness of Chariot, the only private transportation vehicle company now in operation in San Francisco (please see the attached document, "Current Chariot operations"), and urge the San Francisco Municipal Transportation Agency to deny Chariot an operating permit unless its operations obey the law;

2) acknowledge the fact that Chariot, which is more expensive than public transit, is directly competing with Muni and, in fact, threatens Muni, which is required by law to serve all neighborhoods and demographics equitably.

3) ask representatives of Chariot to demonstrate that their vehicles are indeed wheelchair accessible and that wheelchair accessible service is comparable to that of Muni;

4) ask the City Attorney to address the matter of per vehicle fees that the San Francisco Municipal Transportation Agency could charge for use of City Streets as places of enterprise for private gain, the same way the SFMTA has charged medallion fees for taxi cabs. Please see the attached legal document, Mounsey v. CCSF. The City won this case in 2013-2014 when cab drivers sued over the cost of medallions. In fact, for years the SFMTA relied on revenue from the sale of medallions to balance its budget. Due to Uber and Lyft,

medallion sales have stopped. Please ask the City Attorney to address the matter of charging Chariot -- and tech shuttle buses, for that matter -- for use of City streets as places of enterprise for private gain.

Thank you.

Sue Vaughan

March 17, 2018: Current Chariot Operations Are Largely Based on CVC Violations

Current Chariot operations are largely based on violations of the law -- as witnessed by residents of San Francisco and as noted in the August 24, 2016 *Protest of the San Francisco Municipal Transportation Agency to Application No. A.16-08-015*, Chariot's application with the California Public Utilities Commission for status as a passenger stage corporation operating between San Francisco and surrounding counties.

In that document, San Francisco City Attorneys Susan Cleveland-Knowles and David Greenburg note "Chariot's record of repeated violations" of the California Vehicle Code and the San Francisco Transportation Code, among other codes. On page 9 of this document, they write:

Chariot's current operations in San Francisco have shown a consistent and ongoing disregard for other City parking and traffic laws, including but not limited to the following: a) Staging and stopping in residential driveways. ... b) Double parking, blocking traffic ... in the travel lane to load passengers. ... Chariot lists stops [along major Muni corridors such as Geary Boulevard and California Street] on its website with no apparent legal curb space, where vehicles would have to double park to unload passengers. c) Stopping in Muni "red zones" ... along Pine Street in the Financial District and California Street in the Richmond. ... d) Driver behavior: SFMTA Parking Control Officers have reported Chariot drivers being verbally and physically aggressive, including one instance in which a Chariot driver hit the window of the officer's vehicle. ... e) Responsiveness: The SFMTA has repeatedly brought these and other issues to the attention of Chariot. While Chariot staff have often responded pledging to resolve individual issues, the SFMTA has not observed an overall improvement in Chariot's behavior.

Chariot now has around 100 vehicles in its San Francisco fleet, with carrying capacities of 14 passengers each. It is unknown if any are yet wheelchair accessible, and, in fact, Chariot restricts its ridership for insurance purposes. It appears to be a service that has been, at least initially, created to cater to a very narrow demographic, those who work in the Financial District of San Francisco or who take Caltrain to points south for their work.

Observations by members of the general public more than a year since the protest was filed reveal that Chariot's violations continue on a regular and seemingly deliberate basis. Since its inception, Chariot vehicles continue to be observed:

- **Boarding passengers in front of driveways to garages**. Chariot has such stops on Gough Street at Sacramento in front of a driveway frontage, another one on Geary Boulevard at Funston, and a third one on California at Arguello. It may have others. Such stops violate **CVC 22500**: *A person shall not stop, park, or leave standing any vehicle whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places: **(e) (1)** In front of a public or private driveway, except that a bus engaged as a common carrier, schoolbus, or a taxicab may stop to load or unload passengers when authorized by local authorities pursuant to an ordinance*;

- **Staging/parking in front of garage frontages, violating CVC 22507.2**: *Notwithstanding subdivision (e)*

between Arguello and Second Avenue, and on Second Avenue and/or Third Avenue between Cornwall and California;

Stopping in crosswalks to board and discharge passengers, in violation of CVC 22500 (b): *On a crosswalk, except that a bus engaged as a common carrier or a taxicab may stop in an unmarked crosswalk to load or unload passengers when authorized by the legislative body of a city pursuant to an ordinance*; and **CVC 22500 (l)** *In front of or upon that portion of a curb that has been cut down, lowered, or constructed to provide wheelchair accessibility to the sidewalk*;

Stopping in public bus stops (California at Presidio, Geary at Arguello, Haight Street at Masonic, and elsewhere) to pick up and discharge passengers in violation of CVC 22500 (i): *Except as provided under Section 22500.5, alongside curb space authorized for the loading and unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb erected or painted by local authorities pursuant to an ordinance*. CVC 22500.5 permits school buses to operate in a public bus stop, pursuant to the passage of an ordinance, but that's it;

Parking in a handicap zones, such as the one on Fillmore at O'Farrell, in violation of CVC 22507.8.a: *It is unlawful for any person to park or leave standing any vehicle in a stall or space designated for disabled persons and disabled veterans pursuant to Section 22511.7 or 22511.8 of this code or Section 14679 of the Government Code, unless the vehicle displays either a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59*; and,

Parking in bicycle lanes, such as the one on Howard Street, in violation of CVC 21211(a): *No person may stop, stand, sit, or loiter upon any class I bikeway, as defined in subdivision (a) of Section 890.4 of the Streets and Highways Code, or any other public or private bicycle path or trail, if the stopping, standing, sitting, or loitering impedes or blocks the normal and reasonable movement of any bicyclist.* This particular part of the vehicle code makes exceptions for utility vehicles, newspaper delivery vehicles, garbage trucks, or tow trucks, but NOT private transportation vehicles.

We question whether or not this business, whose profit model is currently based largely on law breaking, can get fully into compliance with the law by the time the SF Board of Supervisors passes operating-without-a-permit infraction legislation, and by the time the Mayor signs that legislation. We are also concerned that the SFMTA and the SFPD do not have the capacity and/or perhaps the will to engage in the level of enforcement that is currently necessary and will be necessary in the future to get Chariot and other PTV companies into compliance. Adding to concerns about compliance with the vehicle code, there are no limits on the number of PTV companies that can operate in San Francisco, or the number of vehicles that can operate in a company fleet.

We also question why the SFMTA is not charging fair market value for use of City streets as places of enterprise for private gain, as is the case with the sale of medallions for taxicabs.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

BILL MOUNSEY, IZA PARDINAS, JEFFREY GROVE, UNITED TAXICAB WORKERS, an unincorporated association of San Francisco taxi drivers and the SAN FRANCISCO CAB DRIVERS ASSOCIATION, A California Nonprofit Mutual Benefit Corporation,

Plaintiffs and Petitioners,

vs.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("SFMTA"), EDWARD D. REISKIN, TOM NOLAN, CHERYL BRINKMAN, MALCOLM A. HEINICKE, JERRY LEE, LEONA BRIDGES, JOEL RAMOS, CRISTINA RUBKE, ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF TAXI MEDALLION SALES TRANSFER PROGRAM, and DOES 1-25,

Defendants and Respondents.

Case No. CGC-12-525348

NOTICE OF HEARING OF DEFENDANTS AND RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND/OR SUMMARY ADJUDICATION

Hearing Date:	February 21, 2014
Hearing Judge:	Hon. Marla J. Miller
Time:	9:30 a.m.
Place:	Dept. 302
Date Action Filed:	October 22, 2012
Trial Date:	March 24, 2014
Attached Documents:	None

NOTICE OF HEARING

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 21, 2014, at 9:30 a.m. or as soon thereafter as counsel may be heard, in Department 302 of the San Francisco Superior Court, defendants and respondents San Francisco Municipal Transportation Agency ("SFMTA"), Edward D. Reiskin, Tom Nolan, Cheryl Brinkman, Malcolm A. Heinicke, Jerry Lee, Leona Bridges, Joel Ramos, and Cristina Rubke (collectively "defendants") will, and hereby do, move for an order granting summary judgment in defendants' favor on all causes of action contained within the "Complaint for Reverse Validation Action, Petition for Writ of Mandate and Declaratory and Injunctive Relief" (hereinafter the "Complaint") filed by plaintiffs and petitioners in this action on or about October 22, 2012. Specifically, defendants seek summary judgment on (1) plaintiffs and petitioners' cause of action alleging that SFMTA Resolution 12-110 ("the Resolution") and the Medallion Transfer Program "constitute an illegal enactment of legislation by an administrative agency" (Complaint, ¶ 18(a)); (2) their cause of action alleging that the Resolution and the Medallion Transfer Program "were enacted without due process as required by the CCSF's charter and the California and federal constitutions" (Complaint, ¶ 18(b)); (3) their cause of action alleging that the Resolution and the Medallion Transfer Program "require a payment for a medallion that constitutes the imposition of a special tax without approval of two-thirds vote as required by article XIIIC, section 2 of the California Constitution" (Complaint, ¶ 18(c)); and (4) their cause of action alleging that SFMTA Resolution 12-110 ("the Resolution") and the Medallion Transfer Program "are contrary to promises made to the individual plaintiffs and others similarly situated who detrimentally relied on the rights afforded them by being on the Waiting List." (Complaint, ¶ 18(d).) In the alternative, defendants seek an order summarily adjudicating the above-listed causes of action, and each of them, in defendants' favor, as a matter of law.

Defendants' motion will be, and is, made on the ground that there are no issues of material fact in dispute, and under applicable law and the undisputed facts and evidence before the Court, defendants are entitled to judgment on all causes of action as a matter of law.

Defendants' motion for summary judgment and/or adjudication will be and is based upon this Notice; the accompanying Memorandum of Points and Authorities; the accompanying Separate Statement of Undisputed Material Facts; the accompanying Request for Judicial Notice and exhibits thereto; the accompanying Evidence and exhibits thereto; the accompanying Declarations of Wayne Snodgrass and Christiane Hayashi; defendants' reply papers in support of its motion; the records and pleadings in the Court's file in this case; and upon such other and further matters as may be considered by the Court at the hearing on defendants' motion for summary judgment and/or adjudication.

Dated: December 11, 2013

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
Deputy City Attorney

By: _____
WAYNE SNODGRASS

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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Defendants and Respondents.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND/OR SUMMARY ADJUDICATION

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INTRODUCTION

This case illustrates how those who stand to benefit under a flawed regulatory system resist any reforms to that system. Plaintiffs are taxi drivers whose names are on a waiting list to receive taxi medallions, and who, under rules in place from 1978 through 2012, stood to receive those medallions virtually for free – even if not until old age, when those who finally receive medallions may be infirm or incapable of driving safely and in compliance with local requirements. Plaintiffs challenge a 2012 resolution of the San Francisco Municipal Transportation Agency ("SFMTA"), which allows elderly or disabled medallion holders to surrender their medallions to SFMTA for consideration, rather than continuing to drive and placing public safety at risk, and allows SFMTA to transfer medallions out to other applicants on the waiting list, for a specified price, so applicants can receive medallions sooner

Plaintiffs allege a variety of legal claims, but none pass muster. Defendants thus request that this Court enter summary judgment in their favor, or, failing that, that the Court summarily adjudicate that each of plaintiffs' claims is without merit as a matter of law.

LEGAL AND FACTUAL BACKGROUND

I. IN SAN FRANCISCO AND OTHER CITIES, TAXI MEDALLIONS ARE LEGALLY REQUIRED IN ORDER TO OPERATE A TAXI ON PUBLIC STREETS

Under California law, "[t]he use of public streets for private enterprise is a special privilege peculiarly subject to regulation, and may be withheld on reasonable grounds related to public safety, health and welfare. There is no vested or constitutional right to use a public street for conducting private business." (*O'Connor v. Superior Court* (1979) 90 Cal.App.3d 107, 114; *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1560.) This includes the private business of operating a taxi on public streets. (*O'Connor, supra,* 90 Cal.App.3d at pp. 113-114.)

In San Francisco, as in a number of other American cities, no person may operate a taxi on public streets without possessing a city-issued taxi medallion. (Separate Statement of Undisputed Facts in Support of Motion ["SSF"], Fact 8; Transp. Code[1] §§ 1105(a)(1), 1102 [defining "medallion" as a permit

[1] Relevant sections of the San Francisco Transportation Code are collectively attached as Exhibit A to Defendants' Request for Judicial Notice ("RFJN") in support of this motion.

to operate a taxi, and "taxi" as a motor vehicle "which is used for the transportation of passengers for hire over and along the public streets"].)

II. 1978: PROPOSITION K MAKES MEDALLIONS ENTIRELY NON-TRANSFERABLE

Some cities that require taxi medallions allow such medallions to be freely bought and sold for whatever price the market will bear. (*See, e.g, Harrington v. Hasan* (2002) 191 Misc.2d 617, 743 N.Y.S.2d 684, 687 [enforcing private parties' contract to sell medallion].) Most such cities issue taxi medallions only for a substantial sum of money, which can range as high as $1 million per medallion. (Hayashi Dec., ¶ 7; Evidence, Ex. A [listingNew York City medallion auction price.)

In San Francisco, taxi medallions were readily transferable up until 1978. (*O'Connor, supra,* 90 Cal.App.3d at p. 111.) Medallions were held by corporations and partnerships as well as by natural persons, and no medallion holder was obligated to actually drive his or her cab. City laws and regulators treated medallions as largely private assets. (*Id.*)

In 1978, however, City voters adopted Proposition K, an initiative ordinance that significantly changed the City's taxi laws.[2] (SSF, Fact 4.) Proposition K made all taxi medallions public property, and mandated that medallions automatically expire when the medallion holder dies or, in the case of a corporate medallion holder, when at least 10 percent of the corporation's stock or assets are transferred. (*O'Connor, supra,* 90 Cal.App.3d at p. 110.) The initiative made all medallions "non-transferable and nonassignable either expressly or by operation of law," and barred any person from holding more than one medallion. (*Id.*) New medallions could be issued only to natural persons, each of whom was required to actually drive his or her taxi a specified number of hours per year. (*Id.*; Declaration of Christiane Hayashi in Support of Motion ["Hayashi Dec."], ¶ 12.) Proposition K also mandated that cabs be kept in "continuous operation" each day, to ensure sufficient taxi service. (Prop. K, § 4(a) [RFJN, Ex. B].)

III. PROBLEMS CAUSED BY PROPOSITION K'S TAXI REGULATIONS

After Proposition K was adopted, the City issued taxi medallions free of charge, save application fees and related fees. (Compl., ¶ 15.) Once an applicant received a medallion, however, he or she could earn significant income from it – both by driving the taxi the medallion authorized to operate on public

[2] Proposition K is codified at Appendix 6 to the City's Administrative Code (RFJN, Ex. B).

streets, and by leasing the medallion to a taxi company in exchange for a monthly lease fee. (Hayashi Dec., ¶ 8.) Because medallions were profitable and limited in number, demand quickly outstripped supply.

In approximately 1983, the City created a waiting list for medallion applicants ("the waiting list"), which grew to contain more than 3,000 names. (Hayashi Dec., ¶ 9.) Meanwhile, persons who received medallions typically continued to hold them for the rest of their lives. (*Id.*, ¶ 10.) Consequently, applicants moved up the waiting list only very slowly. By 2008, an applicant receiving a medallion would typically have had his or her name on the waiting list for 14 or 15 years. (*Id.*, ¶ 11.) The waiting time continued to grow: as plaintiffs acknowledged when they filed this suit in 2012, "the current wait for a Medallion is approximately 17 years." (Compl., ¶ 15.)

By the time an applicant eventually received a medallion, he or she typically was at least middle-aged, and was often a senior citizen. In at least one case, a medallion applicant was 78 years old by the time he received a medallion. (Hayashi Dec., ¶ 11.) However, because medallions could never be sold, and medallion holders who relied on the income their medallion generated were legally compelled to continue to drive their cabs full time, the system created an unfortunate "drive 'til you die" incentive for medallion holders to continue driving taxis, in spite of their often advanced age or disabilities. This presented a threat to the safety of other drivers, bicylists, and pedestrians. (*Id.*, ¶ 14.)

IV. 2007: THE VOTERS AUTHORIZE SFMTA TO AMEND ALL TAXI ORDINANCES

In 2007, San Francisco voters adopted a Charter amendment known as Proposition A. It amended Article VIIIA of the City Charter to increase the authority and autonomy of the San Francisco Municipal Transportation Agency ("SFMTA") over the City's transportation system, including MUNI, automobile and bicycle traffic, vehicle parking, and the local taxi industry.[3]

With respect to taxis, Proposition A amended the City Charter to lodge the City's legislative authority over the local taxi industry in the SFMTA Board of Directors, rather than in the Board of Supervisors. As amended by Proposition A, Section 8A.101(b of the Charter states as follows:

> The Board of Supervisors shall have the power, by ordinance, to abolish the Taxi Commission ... and to transfer the powers and duties of that commission to [SFMTA]. In order to fully integrate

[3] SFMTA is governed by a Board of Directors, whose seven members are each appointed by the Mayor and confirmed, after a hearing, by the Board of Supervisors. Once appointed, members of the Board of Directors can be removed only for cause. (Charter § 8A.102(a) [RFJN, Ex. D].)

> taxi-related functions into the Agency should such a transfer occur, the Agency shall have the same exclusive authority over taxi-related functions and taxi-related fares, fees, budgets, and personnel that it has over the Municipal Railway and parking and traffic fares, fees, charges, budgets, and personnel.

(S.F. Charter, § 8A.101(b) [RFJN, Ex. D] [emphasis added].) Moreover, the voters amended the Charter to vest the SFMTA Board with the power to amend or supercede that initiative ordinance, as well as any other taxi-related ordinances:

> Once adopted, Agency regulations shall thereafter supercede all previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations.

(*Id.*; SSF Fact 2) The voters gave SFMTA this legislative power to supercede initiative (and other) *ordinances* by adopting Proposition A, an initiative *Charter amendment*, which is a more difficult type of initiative to place on the ballot.[4]

The official ballot materials had expressly informed the voters that Proposition A would authorize the SFMTA Board to enact regulations superseding Proposition K. A paid argument against the measure, submitted by an official of plaintiff United Taxicab Workers ("UTW") and paid for by the UTW itself, warned that Proposition A would give the SFMTA Board the power to "**repeal Prop K by an administrative rule.**" (Voter Information Pamphlet [RFJN, Ex. E] at p. 46 [emphasis original].) Similarly, the official Rebuttal to Proponent's Argument in Favor of Proposition A alerted voters that the proposition would give the SFMTA Board "the power to eliminate the driving requirements for taxi [medallions] mandated by the San Francisco voters for nearly thirty years." (*Id.* at p. 40, "Rebuttal.")

V. 2010: SFMTA ENACTS THE MEDALLION SALES PILOT PROGRAM

In 2008, the Board of Supervisors adopted Police Code Section 1075.1. That section abolished the Taxi Commission and transferred its responsibilities to SFMTA, which assumed regulatory responsibility for the local taxi industry on March 1, 2009. (SSF Fact 3.)

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[4] As few as four of the City's 11 Supervisors can place an initiative ordinance on the ballot, while placing an initiative Charter amendment on the ballot requires the approval of at least six Supervisors. (S.F. Charter, § 2.113; Cal.Elec.Code § 9255(b)(1).) An initiative ordinance also can qualify for the ballot if its proponent submits signature petitions signed by at least five percent of the number of voters who voted for mayor in the last mayoral election; in contrast, an initiative charter amendment qualifies for the ballot only if its proponent submits signature petitions signed by at least 10% of the City's registered voters. (S.F. Charter, § 14.101; Cal.Elec.Code § 9255(b)(3).) The Charter may be accessed at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca.

In the next 12 months, SFMTA conducted extensive community meetings and outreach to explore ways to revise the City's taxi regulations. (Hayashi Dec., ¶ 19.) The agency's staff explained to attendees and stakeholder groups that it intended to introduce some form of medallion transferability, both to address the problem of elderly and potentially unsafe medallion holder drivers, and to help the City raise much-needed revenue. (*Id.*, ¶ 20; SSF, Fact 13.) Plaintiff UTW warned in its newsletters that SFMTA sought "to introduce medallion transferability," and that the Mayor backed "the idea of selling medallions." (Hayashi Dec., ¶¶ 21, 22; Evidence in Support of Defendants' Mtn. ["Evidence"], Exs. F, G.)

Starting in February 2010, "SFMTA incrementally enacted the Taxi Medallion Sales Pilot Program," a "temporary program sanctioning the sale of a limited number of taxi medallions for a fixed price of $250,000." (Compl., ¶ 8; Hayashi Dec., ¶ 24.) As the SFMTA staff explained in their Staff Report accompanying the Pilot Progra legislation, the Pilot Program was "intended to be an interim measure that will move the taxi industry gradually away from the 'Prop K' system," and further legislative changes could follow the Pilot Program. (Hayashi Dec., ¶ 24.) The Pilot Program lasted approximately two years. Under it, approximately 250 taxi medallion applicants, drawn from the waiting list and from a related driver permit list, purchased medallions for $250,000 each. (*Id.*, ¶ 25.)

VI. 2012: SFMTA ENACTS THE MEDALLION TRANSFER PROGRAM

On August 21, 2012, SFMTA's Board of Directors adopted Resolution 12-110. That resolution amended the City's Transportation Code, and particularly Section 1116 of that Code, "to transition the Taxi Medallion Sales Pilot Program into a long-term medallion transfer policy." (Compl., Ex. A, at "RESOLVED" clause]; *see* RFJN, Ex. F [entire agenda packet for Resolution 12-110].)

Section 1116, entitled "Taxi Medallion Transfer Program," generally makes medallion holders who are over 60 years of age, or have a proven disability preventing them from driving full time, eligible to surrender their medallions to SFMTA for a "Medallion Surrender Payment" of $200,000. (Transp. Code § 1116(a), (b) [RFJN, Ex. A].) SFMTA may then transfer a surrendered medallion to a qualified medallion applicant – who must be drawn from the waiting list, and selected based first on seniority on that list, and secondarily on seniority on the list of medallion applicants holding driver permits – for a fixed"Medallion Transfer Price." That price is currently $250,000, but it may be adjusted based on

"commercially relevant factors."[5] (*Id.*, § 1116(c), (e).) A person to whom SFMTA has transferred a medallion may "retransfer" it to another qualified applicant – who also must be drawn from the waiting list, selected first by seniority on that list and second by seniority on the driver permittee list. Such a retransfer can only be for the same fixed price, and requires SFMTA's approval. (*Id.*, § 1116(h).)

Even under the Medallion Transfer Program, however, medallions continue to be subject to other Proposition K requirements. For example, medallions may be suspended or revoked for cause, and may not be conveyed by gift or bequest. (*Id.*, § 1116(d)(1), (i).) Medallions may be issued only to natural persons, and except where the Transportation Code expressly states otherwise, no medallion may be transferred or assigned at all. (*Id.*, § 1105(a)(2), (4).) With limited exceptions, medallions remain subject to the "continuous operation" requirement, and each holder of a medallion issued after Proposition K was adopted is still required to be a working, full-time driver. (*Id.*, §§ 1105(a)(9), 1109(c)(1).) And the waiting list continues to serve a central function in the distribution of taxi medallions, because SFMTA may transfer medallions only to qualified applicants on the waiting list, rather than to any interested member of the public. (Hayashi Dec., ¶ 27.)

VII. PLAINTIFFS' LAWSUIT

On October 22, 2012, plaintiffs filed their "Complaint for Reverse Validation Action, Petition for Writ of Mandate and Declaratory and Injunctive Relief" in this suit. The individual plaintiffs allege that they are City residents and taxpayers, are on the waiting list, and wish to receive taxi medallions "free of charge except for [the] additional [issuance] fee." (Compl., ¶¶ 10, 11, 15 [RFJN, Ex. C].) The organizational plaintiffs allege that they represent the interests of taxi drivers. (*Id.*, ¶ 12.)

Plaintiffs challenge SFMTA Resolution 12-110 and its amendments to the Transportation Code that establish the Taxi Medallion Transfer Program. (Compl., ¶¶ 1, 13, 16, 18.) They claim that the Resolution and the Transfer Program are unlawful for four reasons: that they (1) "constitute an illegal enactment of legislation by an administrative agency," (2) "were enacted without due process as required

[5] SFMTA has established a lower Medallion Transfer Price of $150,000 for the first 200 qualified applicants on the waiting list. (Transp. Code § 1116(g).) Plaintiffs challenge the resolution that made that change, and another resolution, in *Mounsey et al. v. SFMTA et al.*, No. CPF-12-512660, filed on December 12, 2012.

by the CCSF's charter and the California and federal constitutions," (3) "require a payment for a medallion that constitutes the imposition of a special tax without approval of two-thirds vote as required by article XIIIC, section 2 of the California Constitution," and (4) "are contrary to promises made to the individual plaintiffs and others similarly situated who detrimentally relied on the rights afforded them by being on the Waiting List." (*Id.*, ¶ 18.)

ARGUMENT

I. THIS COURT MAY ADJUDICATE EACH OF PLAINTIFFS' LEGAL CLAIMS

Defendants seek summary judgment, or, failing that, summary adjudication that each of plaintiffs' four substantive legal claims fails as a matter of law. This Court may grant such relief, even though plaintiffs label their relief requests, not their substantive legal claims, as causes of action.

Under California's "primary right" pleading theory, "a cause of action is comprised of a primary right of the plaintiff, a corresponding primary duty of the defendant, and a wrongful act by the defendant constituting a breach of that duty." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681 [internal quotes, cites omitted].) The primary right "is simply the plaintiff's right to be free from the particular injury suffered." (*Id.*) A plaintiff's "primary right must ... be distinguished from the *remedy* sought: The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other." (*Crowley, supra,* 8 Cal.4th. at pp. 681-682 [internal quotes, cites omitted; emphasis original].)

For purposes of this motion, therefore, it is immaterial that plaintiffs have organized their complaint by the various types of relief they seek, rather than by the different primary rights they claim were violated. "The manner in which a plaintiff elects to organize his or her claims within the body of the complaint is irrelevant to determining the number of causes of action alleged under the primary right theory. If a plaintiff states several purported causes of action which allege an invasion of the same primary right he has actually stated only one cause of action." (*Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1257.)

Summary judgment is wholly appropriate here. There are no disputed factual issues, and indeed, barely any controlling "facts" at all. This case turns almost exclusively on local Charter provisions, local

legislative enactments, and applicable Constitutional and statutory provisions. There is no need for such a matter to go to trial.

II. PLAINTIFFS MUST PROVE THAT RESOLUTION 12-110 IS UNLAWFUL

In attacking the legality of Resolution 12-110, plaintiffs bear the burden of showing that the Resolution is unlawful. "Legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1107 [internal quotes omitted].) To overcome this presumption of validity, "the petitioner must bring forth evidence compelling the conclusion" that the enactment is invalid. (*City of San Diego v. Hass* (2012) 207 Cal.App.4th 472, 496; *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.) For the reasons set forth below, and as a matter of law, plaintiffs cannot meet their burden.

III. AS A MATTER OF LAW, RESOLUTION 12-110 IS NOT AN IMPROPER EXERCISE OF LEGISLATIVE AUTHORITY BY AN ADMINISTRATIVE AGENCY

In their first cause of action, plaintiffs allege that because "delegation of legislative power to an administrative agency ... is impermissible," Resolution 12-110 the Medallion Transfer Program "constitute an illegal enactment of legislation by an administrative agency." (Compl., ¶¶ 7, 18(a).) But as a matter of law, this claim must fail. In adopting Resolution 12-110, SFMTA's Board of Directors was exercising legislative power that the voters had permissibly assigned to that agency.

A. A Charter City's Legislative Authority Need Not Be Lodged Exclusively In Its Board of Supervisors or City Council.

The principle that plaintiffs rely on – namely, that an unconstrained "delegation of legislative power to an administrative agency is impermissible" – restricts statutes enacted by the Legislature, and ordinances enacted by local legislative bodies. (*Hess Collection Winery v. California Agr. Labor Relations Bd.* (2006) 140 Cal.App.4th 1584 [Legislature]; *Kugler v. Yocum* (1968) 69 Cal.2d 371 [local ordinance].) As courts have held, "[a]n unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions." (*Hess Collection Winery, supra*, 140 Cal.App.4th at p. 1604 [citing *People v. Wright* (1982) 30 Cal.3d 705, 712-13].) This principle rests upon the premise that the legislative body – the officials entrusted with

policymaking authority – "must itself effectively resolve the truly fundamental issues. It cannot escape responsibility by explicitly delegating that function to others ..." (*Kugler, supra*, 69 Cal.2d at p. 376.)

However, this principle does not apply to decisions by the *voters* as to how a city charter will allocate the city's legislative powers among various agencies within the city's governmental structure. Under Article 11, Section 5(a) of the California Constitution, charter cities are given broad power to control their own municipal affairs, and their enactments on such subjects supersede any contrary state statutes. (*Dibb. v. County of San Diego* (1994) 8 Cal.4th 1200, 1207.) As part of their control over their municipal affairs, charter cities possess "broad[] authority to structure and organize their government," and extensive "authority ... over the *structure and operation* of their local government." (*Id.*, 8 Cal.4th at pp. 1207, 1211 [emphasis original].) Even for a charter county – and, therefore, all the more for a charter *city* – "home rule," under the Constitution, "contemplates the right of the people of a charter county to create their own local government and define its powers within the limits set out by the Constitution." (*Id.*, 8 Cal.4th at p. 1218.)

Moreover, "in establishing a governmental structure for the purpose of managing municipal affairs ... local entities (through charter provisions and the like) *may combine executive, legislative, and judicial functions in a manner different from the structure that the California Constitution prescribes for state government.*" (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1093 fn. 23 [emphasis added]; *D'Amato v. Superior Court* (2008) 167 Cal.App.4th 861, 869.)

In structuring and organizing their governments, of course, charter cities must comply with constitutional requirements. But the Constitution does not specify which boards or agencies within a charter city may exercise legislative authority and enact police power measures. Instead, it states only that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal.Const., Art. 11, §7.)[6] Thus, rather than mandating that all such "ordinances and regulations" may only be enacted by a city council or board of supervisors,

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[6] Similarly, the Constitution states that city charters may "provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters" (Cal.Const., Art. 11, §5(a)), but does not specify *which* boards or agencies may exercise the legislative power to adopt such "ordinances and regulations" governing municipal affairs.

the Constitution instead leaves it to the discretion of each charter city, and each city's voters in approving a charter, to determine how legislative authority shall be allocated and apportioned within the structure of local government.

B. Courts Have Upheld The Exercise Of Legislative Power By Diverse Local Bodies.

In approving a municipal charter, local voters may assign legislative authority over specified subjects to a local administrative agency, rather than to the city council or board of supervisors.

- *City of Oakland v. Hogan* (1940) 41 Cal.App.2d 333, for example, held that Oakland's Board of Port Commissioners, which the city charter grants "complete and exclusive power" over port functions, "is a legislative body of the Oakland municipality." (*Id.*, 41 Cal.App.2d at pp. 341, 345.) Because the Board is created by the city charter, the court held, "*whatever rights may be given to the municipality may be bestowed upon the agency.*" (*Id.* at pp. 342-43 [emphasis added].) As the court explained, "under our modern form of government, particularly in larger communities, legislative functions are often bestowed upon more than one commission or board, as for instance, boards of health, education, park, police, waterway or other public bodies ...." (*Id.*, 41 Cal.App.2d at p. 344.)
- *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898 involved San Francisco's Health Service Board, which the Charter authorized "to oversee the establishment and administration of all 'medical care' plans for city employees" and to "develop[] new 'medical care' plans." (*Id.*, 13 Cal.3d at p. 923.) The Court invalidated an ordinance adopted by the Board of Supervisors that would establish a new dental plan, explaining that it constituted "the board of supervisors' entry into a field which the charter appears clearly to have delegated to the city health service board." (13 Cal.3d at p. 924.)
- *Fire Fighters' Union v. City of Vallejo* (1974) 12 Cal.3d 608 held that a city charter provision requiring that disputes as to wages, hours and working conditions be resolved by an unelected Board of Arbitrators did not unlawfully delegate legislative power to outside arbitrators. "Through section 810 [of the charter] the citizens of Vallejo delegated to a board of arbitrators the power to render a final and binding decision" over labor contract negotiations, and "[t]o the extent that the

arbitrators do not proceed beyond the provisions of the Vallejo charter there is no unlawful delegation of legislative power." (*Id.*, 12 Cal.3d at p. 622, fn. 13.)

- In *Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, the city charter created an autonomous Rent Control Board, and empowered it, *inter alia,* to enact its own budget, appropriate needed funds, and enact rules governing rent control matters. The court held that "[t]he citizens of Santa Monica ... resolved the fundamental policy questions in this case by enacting the charter amendment provisions empowering the Board to regulate rents, finance its necessary and reasonable expenses through fees, and employ and pay its own staff. (*Id.*, 160 Cal.App.3d at p. 1021.) There was no unlawful delegation, because "[t]he authority was delegated by the electorate through the device of an initiative amendment to the charter." (*Id.*)

Charter cities thus may assign legislative power to bodies other than the city council or board of supervisors. Similarly, the state Legislature has authorized counties to designate agencies within their governmental structure, other than the county board of supervisors, to exercise legislative power over specified subjects. For example, Section 17001 of the Welfare & Institutions Code authorizes "standards of aid and care" for General Assistance relief for the indigent to be adopted, within each county, by the county's board of supervisors, "or the agency authorized by county charter" to perform that task. (*Id.*) Setting such standards of aid and care is clearly a legislative act. (*Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 244 [local initiative setting standards of aid and care was "quintessential[ly] legislative" in nature].) Yet the Legislature has empowered each county to designate *any agency it chooses* to exercise the legislative authority needed to enact such standards.

In a charter city, therefore, the voters may enact charter provisions that create a governmental structure which allocates the city's legislature authority to more than one agency or body, elected or otherwise. Accordingly, when San Francisco voters adopted Proposition A in 2007, they permissibly assigned the City's legislative power "over taxi-related functions and taxi-related fares, fees, budgets, and personnel," and over "motor vehicles for hire," to SFMTA.

C. In Adopting Proposition A In 2007, The Voters Authorized The SFMTA To Repeal Or Amend Proposition K.

The electorate has the power to determine whether, and under what circumstances, voter-enacted initiatives may subsequently be amended by a legislative body. (*See Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251 ["the voters have the power to decide whether or not the Legislature can amend or repeal initiative statutes"] [emphasis omitted]; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 22 [California Constitution "preclud[es] the Legislature from undoing what the people have done, without the electorate's consent"].) A charter city may determine the specific procedures by which the local electorate may consent to the legislative body's later amendment of aninitiative, because "the local exercise of the initiative power" is an "area[] that ha[s] long been considered [a] municipal affair[.]" (*Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 47; Cal.Const., Art. II, § 11(a) [providing for local initiative and referendum powers, but stating that with exceptions not relevant, "this section does not affect a city having a charter"].)

Here, the voters who adopted Proposition A in 2007 effectively made SFMTA the City's legislative body concerning taxi matters. They also authorized that it to adopt regulations superceding "*all* previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such regulations," including previously-adopted initiative ordinances. The voters knew that Proposition A would give SFMTA such authority, because the official voter pamphlet repeatedly warned them that the measure would have that effect. By adopting Proposition A, therefore, the voters consented to the enactment of subsequent legislation by the SFMTA Board – such as Resolution 12-110, the Resolution at issue in this suit – which partially amends or overrides Proposition K. Thus, in enacting Resolution 12-110, SFMTA's Board of Directors merely exercised the legislative authority that the Charter, and the voters, had permissibly assigned to it. As a matter of law, plaintiffs cannot prevail on their claim that that Resolution constitutes an unlawful exercise of legislative power.

IV. AS A MATTER OF LAW, RESOLUTION 12-110 WAS ENACTED IN COMPLIANCE WITH DUE PROCESS

Plaintiffs admit that the SFMTA Board enacted Resolution 12-110 "after ... three days notice." (Compl., ¶8.) Nonetheless, in their second claim, plaintiffs allege that Resolution 12-110 was "enacted

without due process as required by the CCSF's charter and the California and federal Constitutions," and "without the requisite notices and opportunity to be heard afforded other legislation enacted on behalf of the Board of Supervisors." (Compl., ¶ 18(b).) As a matter of law, this claim must fail. In adopting the Resolution, SFMTA complied with all applicable due process and other legal mandates.

A. Plaintiffs Cannot Show Any Violation Of Procedural Due Process.

1. Resolution 12-110 did not affect any vested property right.

First, neither plaintiffs, nor anyone on the medallion waiting list, had any property right in the continuance of the "old," Proposition K-based system of medallion issuance, or in being awarded a medallion under that old system. To possess a property right, a person "clearly must have more than an abstract need or desire" for, or "a unilateral expectation of," the matter at issue. (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577.) "He must, instead, have a legitimate claim of entitlement to it." (*Id.*; *Lawrence v. Hartnell Community College Dist.* (2011) 194 Cal.App.4th 687, 702.) But plaintiffs and others on the waiting list were not *entitled* to the continued use of the "old" medallion issuance system, or to receive a medallion under that system.

"Any statute may be repealed at any time," and "[p]ersons acting under any statute act in contemplation of this power of repeal." (Gov.Code § 9606.) And while that rule does not apply where the repeal would impair vested rights (*id.*), that exception is inapplicable here, because a change in the laws that govern the issuance and transferability of taxi medallions does not impair vested rights:

> [T]he use of public streets for private enterprise is a special privilege particularly subject to regulation, and may be withheld on reasonable grounds related to public safety, health and welfare. There is no vested or constitutional right to use a public street for conducting private business .... [a] license or permit to engage in the taxicab business, issued by the city pursuant to its police power, does not convey a vested property right.

(*O'Connor, supra*, 90 Cal.App.3d at p. 114.) "[T]axicab drivers do not obtain any vested right in the grant of permission to operate taxicabs on the public roadways. Rather, that permission may be altered at the discretion of the issuing authority." (*Cotta, supra,* 157 Cal.App.4th at p. 1560.) Similarly, even a person who already holds a taxi medallion has no property right in the continuance of any particular regulatory regime: "an ordinance adopted in the exercise of the police power does not create contract rights in the continuance of the regulation." (*O'Connor, supra,* 90 Cal.App.3d at p. 114 [Proposition K, which

rendered taxi medallions wholly non-transferable, did not take existing medallion holders' property].) Thus, a law such as Proposition K that regulates medallions may be repealed "at any time." All persons on the waiting list "act in contemplation of this power of repeal." (Gov.Code § 9606.)

O'Connor and *Cotta* defeat any property right. If a change in the laws governing medallions does not affect property rights of persons *who already hold medallions*, as those cases hold, then such a change certainly cannot affect any property rights of persons *who do not already hold medallions*, and who merely desire to receive medallions after their names rise to the top of a waiting list.

2. The adoption of Resolution 12-110 was a legislative decision and is not subject to procedural due process requirements.

Moreover, "due process principles of notice and opportunity for hearing do not apply to legislative action. Only those governmental decisions which are *adjudicative* in nature are subject to procedural due process principles.'" (*Mission Hospital Regional Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 484 [emphasis original] [citing *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612].) Adjudicatory decisions are those "in which the government's action affecting an individual is determined by facts peculiar to the individual case," while legislative decisions are those "which involve the adoption of a broad, generally applicable rule of conduct on the basis of general public policy." (*Horn, supra*, 24 Cal.3d at p. 613 [parentheses, internal quotes omitted].)

SFMTA's adoption of Resolution 12-110 was legislative, not adjudicative. Rather than applying an existing standard to the facts of an individual case, the Resolution adopts a broad, new standard of conduct with respect to taxi medallions in general, based on public policy concerns such as the public safety risks fostered by the Proposition K waiting list system. Because the adoption of the Resolution was legislative in character, it was not subject to procedural due process requirements.

B. Plaintiffs cannot show any violation of other notice and hearing requirements.

Plaintiffs also contend that the SFMTA Board adopted the Resolution "on an expedited basis without the requisite notices and opportunity to be heard afforded other legislation enacted on behalf of the Board of Supervisors." (Compl, ¶18(b).) This claim must fail.

"It is firmly established that the mode and manner of passing ordinances is a municipal affair ... and that there can be no implied limitations upon charter powers concerning municipal affairs." (*People ex*

rel. Seal Beach Police Officers Ass'n v. City of Seal Beach (1984) 36 Cal.3d 591, 601 fn. 12; *Trader Sports, Inc., supra*, 93 Cal.App.4th at p. 47.) Here, while the Charter specifies procedures that the Board of Supervisors must follow to enact ordinances and resolutions,[7] the Charter imposes no similar requirements on SFMTA's Board of Directors when it enacts legislation within its field of legislative authority. Nothing in the Charter required that the SFMTA Board follow the same procedures to enact Resolution 12-110 as the Board of Supervisors employs when it enacts ordinances. And no other law imposed such a requirement; indeed, state law expressly authorizes cities to adopt regulations regarding "licensing and regulation of operation of vehicles for hire" – including taxis – "by ordinance *or resolution*." (Cal.Veh.Code § 21100(b) [emphasis added].) And while the Brown Act required the SFMTA Board to provide 72 hours notice of its intent to consider adopting Resolution 12-110, plaintiffs admit that the SFMTA Board did so. (Compl., ¶ 8.) In adopting the Resolution, the SFMTA complied with all applicable requirements.

V. RESOLUTION 12-110 DOES NOT ESTABLISH AN UNLAWFUL TAX

In their third claim, plaintiffs allege that Resolution 12-110 and the Medallion Transfer Program are invalid because they "require a payment for a medallion" – that is, the Medallion Transfer Price – which "constitutes the imposition of a special tax without approval of two-thirds vote as required by Article XIIIC, section 2 of the California Constitution." (Compl., ¶ 18(c).) But this claim must fail, because the Constitution – which places the burden of proof on this claim on the City, not on plaintiffs – also makes clear that the Medallion Transfer Price is not a tax at all.

A. A Charge Imposed For The Use Of Local Government Property Is Not A "Tax."

Although Article XIIIC, section 2 of the California Constitution requires a majority vote for a local general tax and a 2/3 vote for a local special tax, it does not define or otherwise specify what constitutes a "tax." However, Article XIIIC, Section 1 includes a "safe harbor": it specifies seven categories of charges that, for purposes of Article XIIIC, are *not* taxes. And one of those categories – a charge "for the use of local government property" – is directly applicable here, because a taxi medallion is the legal

[7] To adopt an ordinance, the Board of Supervisors must approve the ordinance at "two readings at separate meetings of the Board of Supervisors, which shall be held at least five days apart." (S.F. Charter, § 2.105.) The Board of Supervisors may adopt a resolution at a single reading. (*Id.*)

authorization to "use local government property" – namely, city streets – as the location for the operation of a taxi business. Article XIIIC, Section 1 states, in relevant part:

> SECTION 1. Definitions. As used in this article:
>
> ***
>
> (e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:
>
> ***
>
> (4) A charge imposed for ... use of local government property, or the purchase, rental, or lease of local government property.

(*Id.* [emphasis added].) Under the plain language of the above-quoted provision, a charge "imposed for ... use of local government property" is not a tax *regardless of its amount*, and regardless of whether the charge exceeds any costs the government may incur when the "use of local government property" occurs. The drafters of Article XIIIC Section 1, and the voters who approved it as part of Proposition 26 in November 2010, chose to include such a "governmental costs" limitation in some of the other "safe harbor" provisions listed in Article XIIIC, Section 1(e).[8] The fact that the drafters and the voters elected not to include a similar "governmental costs" limitation in Article XIIIC Section 1(e)(4) shows that they intended that a charge imposed to use local government property is not a tax, regardless of whether that charge is limited to, or exceeds, the government's costs.

That Article XIIIC Section 1(e)(4) does not contain any such "governmental costs" limitation is hardly surprising. California law has long authorized local government entities to allow the private use of public property, and to sell or lease public property, at market rates – that is, at the highest price the market will bear – in order to protect the public fisc. For example:

- "A franchise has been defined as 'a privilege conferred upon an individual or a corporation for use of a sovereign body's property.'" (*City of Santa Cruz v. PG&E* (2000) 82 Cal.App.4th 1167, 1171 fn. 2.) Franchises include, for example, the right "to collect from single family dwellings or transport upon city streets any 'solid waste'" (*Waste Management of Alameda County, Inc. v.*

[8] *See, e.g.*, Art. XIIIC § 1(e)(1) (a "tax" does not include "[a] charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, *and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege*") (emphasis added).

Biagini Waste Reduction Systems, Inc. (1998) 63 Cal.App.4th 1488, 1492), and "the right to use city streets to distribute electricity, gas, or water to the city and its inhabitants." (*City of Santa Cruz, supra,* 82 Cal.App.4th at p. 1171.) And "[n]ormally the utility is charged a franchise fee as consideration for that privilege." (*Id.*) Yet franchise fees are not limited to the government's costs: "*fees paid for franchises are not taxes, user fees or regulatory licenses.*" *Santa Barbara County Taxpayers Association v. Board of Supervisors for the County of Santa Barbara* (1989) 209 Cal.App.3d 940, 950.)

- In selling or leasing county property, a county's board of supervisors must solicit proposals, and "the proposal which is the highest shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids." (Gov. Code § 25530.) Similarly, in leasing property, a city's "legislative body shall award the lease to the highest responsible bidder." (*Id.*, § 50514.)[9]

Moreover, nothing in the text of Article XIIIC Section 1(e), or in the legislative history of 2010's Proposition 26, suggests that Section 1(e)'s definition of "tax" is intended to alter the longstanding principle that public entities can charge market rates for the use, sale or lease of publicly-owned property. (RFJN, Ex. G [2010 ballot pamphlet pages concerning Proposition 26].) The voters who adopted Proposition 26 would reasonably have understood that they were making it harder for local governments to charge regulatory fees to recover the costs of cleaning up pollution or addressing health effects of dangerous products – not that they were preventing local governments from imposing realistic or market-based charges on private entities who wish to use public property for private gain.

B. The Medallion Transfer Price Is "A Charge Imposed For Use Of Local Government Property."

The Medallion Transfer Price is simply "[a] charge imposed for [the] use of local government property" within the meaning of Article XIIIC, Section 1(e)(4) of the Constitution. This conclusion flows from the unusual nature of a taxi medallion and the privilege it affords the medallion holder.

Rather than being merely a permit to operate a cab, a medallion grants its holder the "special privilege" of "us[ing] ... public streets for private enterprise." (*O'Connor,* 90 Cal.App.3d at p. 114.) Local

[9] Were it otherwise, private persons renting out City Hall for a private gala, or buying surplus government land, would realize a windfall by paying only the government's costs, not market rates.

law requires a person to possess a medallion in order to operate a taxi, and specifically defines a taxi as a motor vehicle "which is used for the transportation of passengers for hire *over and along the public streets*." (Transp. Code § 1102 [emphasis added].) The right "to use streets in the ordinary way is quite different from the right to use them as a place of business for private gain. . . . [s]uch use, when granted, is a special or extraordinary privilege. It is an added easement or burden on the street, and is not comparable to the right to conduct lawful business on private property." (*Cotta*, 157 Cal.App.4th at p. 1561.)

A taxi medallion is required to use public streets "as a place of business for private gain." Consequently, the charge to obtain a medallion – that is, the Medallion Transfer Price" – is "imposed for ... use of local government property." Under Article XIIIC, Section 1(e)(4), it is not a tax.

VI. RESOLUTION 12-110 DOES NOT VIOLATE PROMISES MADE TO PLAINTIFFS

In their fourth claim, plaintiffs contend that Resolution 12-110 and the Medallion Transfer Program are invalid because they "are contrary to promises made to the individual plaintiffs and other similarly situated who detrimentally relied on the rights afforded them by being on the Waiting List." (Compl., ¶ 18(d).) This claim, too, fails as a matter of law.

A. The Waiting List Did Not Create "Rights" In Plaintiffs Or Others.

No person was afforded any "right" to a medallion, or to the continued use of the Proposition K-based medallion issuance system, by their "being on the Waiting List." "[T]he granting or withholding of a privilege based upon certificates of public convenience and necessity presents no judicial controversy touching on the impairment of vested rights" (*Cotta,* 157 Cal.App.4th at p. 1560), and "an ordinance adopted in the exercise of the police power does not create contract rights in the continuance of the regulation." (*O'Connor,* 90 Cal.App.3d at p. 114.) Proposition K and its medallion issuance system were enacted under the City's police power to further public welfare, and the City could not divest itself of the authority to later amend or repeal those measures as it deemed necessary to better promote public welfare. Because no vested rights were at issue, plaintiffs, in placing their names on the waiting list and maintaining their eligibility to be issued a medallion, "acted in contemplation of" the possibility that Proposition K and its system of medallion issuance could be "repealed at any time." (Gov.Code § 9606.)

B. Plaintiffs Were Not Promised No Changes To The Medallion Issuance System.

Plaintiffs provide no legal label for their fourth cause of action, but it appears to be a claim for promissory estoppel. However, it is a "well-established proposition that an estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy, adopted for the benefits of the public." (*Cotta, supra*, 157 Cal.App.4th 1550, 1567; *City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 279 [no estoppel against a public entity "except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy"].)

Cotta, for example, affirmed summary judgment on promissory and equitable estoppel claims arising from a series of resolutions that the City's Airport Commission had adopted in an effort to incentivize taxi drivers to purchase cabs powered by compressed natural gas (CNG). After several such resolutions progressively increased the competitive advantages that drivers of CNG cabs would receive, and plaintiffs bought CNG cabs in order to receive those advantages, drivers of regular cabs stopped work in protest, disrupting airport transportation. (*Id.*, 157 Cal.App.4th at pp. 1554-55.) The Commission then rescinded its prior incentive resolutions, and adopted a new resolution offering only lesser incentives. (*Id.* at pp. 1555-56.) Drivers of CNG cabs sued, and the First District affirmed summary judgment for the City. It held that the Airport Commission's resolutions had not been contracts, and would be unenforceable in any event: the city"may not contract away its right to exercise the police power in the future," and any contract purporting to do so was invalid as against public policy. (*Id.*) It also rejected promissory estoppel, stating that "to be binding, the promise must be clear and unambiguous." The resolutions did not meet that standard, even though they were adopted by the Commission itself, and even though they stated, with specificity and without reservation, the benefits that drivers of CNG cabs would receive. As the court held, "any promissory estoppel claim fails because the facts do not show that the City promised not to amend the incentive program." (*Id.*, 157 Cal.App.4th at p. 1566.) The court also refused to "apply an estoppel in this situation where to do so would chill the City's exercise of its police power." (*Id.* at p. 1567.)

Here, none of the "promises" plaintiffs point to were "clear and unambiguous," as *Cotta* requires. None were even made by the SFMTA Board, the autonomous body whose legislative authority plaintiffs seek to estop. (SSF 10.) And none purported to commit that the SFMTA, in the future, would not reform

the medallion distribution system. (SSF 12.) Plaintiffs cite a 2007 letter from the Mayor and President of the Board of Supervisors, but those officials spoke of their own views, stating generally that it was "the goal to respect the will of the voters on Taxi issues," and that they were "supportive" of "protect[ing] Proposition K." Notably, they did not specifically mention medallion issuance or the use of the waiting list. (Evidence, Ex. D.) Plaintiffs also cite a 2009 memo by SFMTA Taxi Director Hayashi to SFMTA's Executive Director, but that memo concerned a reform proposal *which SFMTA never adopted.* In any event, Ms. Hayashi merely stated that SFMTA "should respect" the expectations of persons on the waiting list. (*Id.*) Plaintiffs also cite documents issued under the Pilot Program, but those documents merely explained that while the Pilot Program was in effect and some medallions were being sold, other medallions would continue to be issued to persons on the waiting list under the old Proposition K system. Moreover, plaintiffs cannot reasonably have believed that SFMTA was promising (or could promise) that the Proposition K distribution system would never change. The voters repeatedly faced ballot initiatives which would repeal Proposition K, and after SFMTA took control of taxi regulation in March 2009, SFMTA staff held public meetings announcing the agency's intention to make taxi medallions transferable. (SSF 13.) The Pilot Program, begun in 2010, involved medallion sales, and its documents warned that SFMTA intended to move the taxi industry "away from the 'Prop K' system."

Finally, estoppel cannot lie because it would prevent SFMTA from exercising its police power to address the safety risks that the Proposition K waiting list presented. A system under which senior citizens receive medallions after decades of waiting, and then must drive their cabs full-time to retain their medallions, presents genuine risks to public welfare. Public policy strongly favors allowing – not barring – the SFMTA's exercise of its police powers to address those risks.

CONCLUSION

Defendants and respondents respectfully ask that the Court grant summary judgment.

Dated: December 11, 2013

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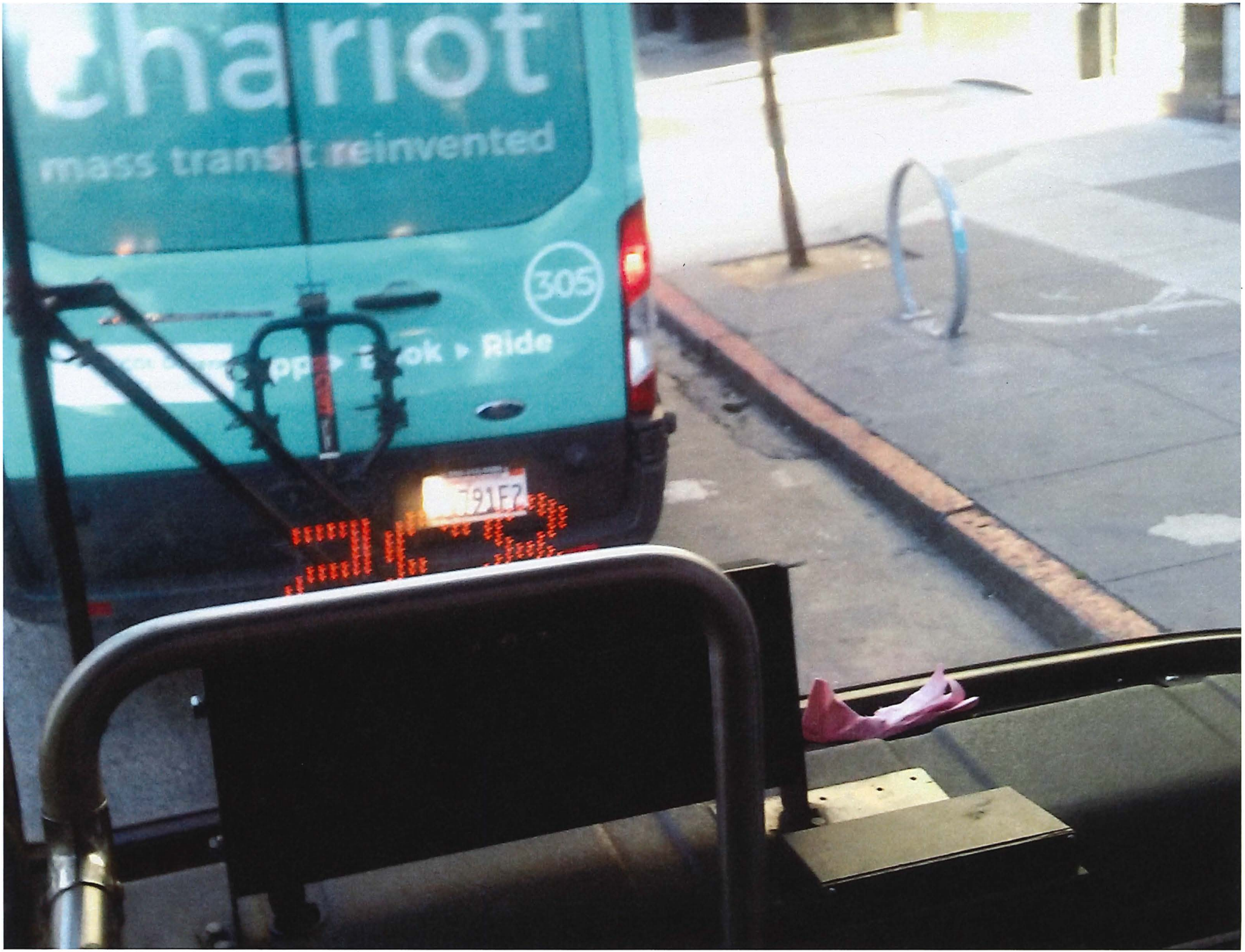
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