



STATUTORY EXEMPTION APPEAL

SFMTA - COVID-19 Muni Bus Service Adjustments and Associated Changes – August 22, 2020

Date: **October 26, 2020**
To: **Angela Calvillo, Clerk of the Board of Supervisors**
From: **Lisa Gibson, Environmental Review Officer**
Lauren Bihl, lauren.bihl@sfgov.org

RE: **Planning Record No. 2020-007286ENV; Board of Supervisors File No. 201112**
Appeal of Statutory Exemption for the SFMTA - COVID-19 Muni Bus Service
Adjustments and Associated Stop, Street, and Parking Changes – August 22, 2020

Hearing Date: **November 3, 2020 (proposed for continuance to November 10, 2020)**

Project Sponsor: **Jean Long, SFMTA, jean.long@sfmta.com**
Appellant(s): **David Pilpel**
Justin A. Zucker, of Reuben, Junius & Rose, LLP on behalf of Safeway, Inc.

Planning Department's Recommendation

Uphold the California Environmental Quality Act (CEQA) statutory exemption determination and deny the appeal of the CEQA determination.

Introduction

This memorandum is a response to the letters of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a statutory exemption determination under CEQA for the proposed San Francisco Municipal Transportation Agency's (SFMTA) COVID-19 Muni Bus Service Adjustments and Associated Stop, Street, and Parking Changes (the project).

The department, pursuant to Article 19 of the CEQA Guidelines, issued a statutory exemption for the project on August 14, 2020 finding that the proposed project is exempt from the California Environmental Quality Act (CEQA) per CEQA Section 21080(b)(4) and CEQA Guidelines Section 15269(c), the Emergency Projects statutory exemption provision. The project is also exempt per CEQA Section 21080(b)(10) and CEQA Guidelines Section 15275, the Specified Mass Transit Projects statutory exemption provision.

The decision before the board is whether to uphold the department's decision to issue a statutory exemption and deny the appeal, or to overturn the department's decision to issue a statutory exemption and return the project to the department staff for additional environmental review.

Site Description and Existing Use

The project site consists of 12 Muni bus routes spread across several neighborhoods throughout San Francisco. Figure 1, Core Service Plan After Proposed Adjustments for Muni Bus Routes shows the locations of these transit lines. Table 1, Proposed Adjustments for Muni Bus Routes, provides a complete list of the routes within the scope of the project. The existing roadways in the proposed project corridors range in size from a two-lane road to a six-lane street with a divider and parking on either side.

Figure 1: Core Service Plan After Proposed Adjustments for Muni Bus Routes



Project Description

On February 25, 2020, Mayor London Breed of San Francisco, issued a local health emergency under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of the coronavirus (COVID-19) pandemic (public health emergency) within the city. On March 6, 2020, San Francisco Health Officer Tomas Aragon declared a health emergency due to the COVID-19 pandemic and subsequently enacted Health Orders to protect the public health. Health Order No. C19-07 (Stay Safer at Home) was originally issued March 16, 2020 as Shelter in Place, and has been amended several times as conditions change and additional information and recommendations become available.¹ Health Orders are enforceable laws and are usually accompanied by one or more Directives which provide legally binding instructions for how to comply with the Health Order.

Since April 8, 2020, Muni has been operating a COVID-19 Muni Core Transit Service Plan (Core Service Plan) for transit to support essential trips. The San Francisco Municipal Transportation Agency (SFMTA) has since seen an increase in the number of riders that are using transit for their essential trips over the initial ridership in the early period of the emergency. As such, the SFMTA proposes to modify the Core Service Plan by making bus service changes to increase the amount of transit service provided in addition to the return of Muni Rail service. Adding more frequent service on targeted routes would address crowding, pass-ups (which occurs when the bus is carrying too many passengers to stop and pick up additional passengers at a transit stop), and improve physical distancing between passengers onboard buses. These bus service changes would provide transit service during the designated health emergency and are temporary. The modifications to Muni Core Bus Service would also be supported by the Temporary Emergency Transit Lanes program, which would install temporary transit lanes along some of the corridors in the Core Service network (Case No. 2020-005472ENV).

In addition to modifying the routes included in Table 1: Proposed Adjustments for Muni Bus Routes below, the project would implement more frequent service to provide more capacity for physical distancing between riders on the following routes: 8 Bayshore; 9 San Bruno; 9R San Bruno Rapid; 12 Pacific Community Shuttle; 14 Mission; 19 Polk; 22 Fillmore; 24 Divisadero; 25 Treasure Island; 28 19th Ave; 29 Sunset; 43 Masonic; and 44 O’Shaughnessy.

Table 1: Proposed Adjustments for Muni Bus Routes

Route	Adjustment(s)
7 Haight-Noriega	<ul style="list-style-type: none"> • Service would be extended east past its current temporary terminal at Funston Avenue and Irving Street to include the full route between Ortega Street and 48th Avenue and downtown. This would provide restored service to Haight and Market streets as the N Bus Substitution would be discontinued because N Judah rail service would be restored. • Service would be provided by 60-foot coaches instead of 40-foot coaches to provide more capacity on the buses and improve the ability for riders to physically distance on the bus.

¹ San Francisco Department of Public Health. 2020. Orders Issued by the San Francisco Health Officer Relevant to Coronavirus (COVID-19). Available online at <https://www.sfdph.org/dph/alerts/coronavirus-healthorders.asp>. Accessed September 9, 2020.

<p>12 Pacific Community Shuttle</p>	<ul style="list-style-type: none"> • Service would be extended south from Sansome and Washington streets to include serving Market Street via Sansome Street. • By extending service into the Financial District, SFMTA is addressing a customer priority and providing connections to additional transit routes, essential services, and regional transit connections such as BART, AC Transit, and Golden Gate Transit.
<p>14 Mission</p>	<ul style="list-style-type: none"> • Bus mode change from 60-foot motor coach to 60-foot electric trolley coach.
<p>28 19th Avenue</p>	<ul style="list-style-type: none"> • Service would be restored on weekends using the current shortened route between Daly City BART and California Street and 7th Avenue. Service on the weekends would provide weekend connections for essential workers arriving on BART and traveling to a number of medical facilities on Geary and California Streets. This service increase would also allow essential trips to Stonestown Galleria (shopping mall) and other destinations for groceries and other essential services.
<p>37 Corbett</p>	<ul style="list-style-type: none"> • This modified 37 Corbett service responds to feedback from Muni customers identifying service on upper Market area and access to the hilly Twin Peaks neighborhood as a priority. • This route would connect riders with grocery stores, hospitals, and other transit connections. • To provide additional capacity, the route would be served by a 40-foot coach, instead of the typical 30-foot coach under pre-COVID operation. Therefore, parking would be removed to accommodate the longer coaches. • A new bus zone would be created on Parkridge Drive at the northwest corner of Burnett Avenue in order to accommodate the longer buses (loss of 3 parking spaces). • The route would need minor temporary parking and traffic changes in order to turn around at 11th Street and Market Street. These changes would consist of allowing Muni buses to make a left turn from 11th Street onto westbound Market Street. In addition, to install a new bus layover terminal along the east side of 11th Street between Market and Mission streets, three yellow commercial metered parking spaces and a 101-foot long white passenger loading zone would be removed. These loading spaces are not being well-used under the current conditions and there are 2 yellow commercial metered parking spaces and a 20-foot long white passenger loading zone on the west side of 11th Street that can be used. • Due to the route being served by 40-foot coaches, there would be daylighting (implementing red zones [no parking] at intersection approaches to increase visibility) at several locations (listed below) where red color curb would be applied; no red color curb would extend beyond 20-feet in length. The locations are as follows: Corbett Avenue and 17th Street intersection (2 daylighting locations); Corbett Avenue and Ord Street intersection; Corbett Avenue and Clayton Street intersection; Portola Drive and Market Street intersection; Burnett Avenue and Portola Drive intersection; Crestline Drive and Parkridge Drive intersection (2 daylighting locations); Corbett Avenue near 470 Corbett Avenue; Crestline Drive near the driveway of 41 Crestline Drive;

	<p>Crestline Drive, near the driveway of 40 Crestline Drive; and Parkridge Drive, near the driveway of 90 Parkridge Drive. Approximately 4 non-metered parking spaces would be removed as a result of the daylighting.</p>
38 Geary	<ul style="list-style-type: none"> In response to feedback from Muni customers regarding service from the VA Hospital and the Vista Del Mar area, the 38 Geary service would be modified so that between 6 AM and 9 PM daily, half of the buses would terminate at the Geary Boulevard and 32nd Avenue terminal, while the other half would terminate at Fort Miley/VA Hospital. At all other times, all 38 Geary trips would terminate at 48th Avenue and Point Lobos. The 38 Geary buses terminating at Fort Miley/VA Hospital would layover and then proceed on the inbound route, picking passengers up at the existing stop locations.
44 O’Shaughnessy	<ul style="list-style-type: none"> The 44 O’Shaughnessy is currently operating a shortened route between the Bayview district and Forest Hill Station. In response to feedback from Muni customers regarding cross town service and access to Laguna Honda and UCSF Parnassus hospitals, the 44 O’Shaughnessy would return to its original pre-COVID-19 full route between the Bayview district and California Street and 6th Avenue.
45 Union-Stockton	<ul style="list-style-type: none"> The 45 Union-Stockton is not currently operating. In response to feedback from Muni customers about crowding on the 8 Bayshore and 30 Stockton bus routes in the Chinatown neighborhood, the 45 Union-Stockton would return to its original pre-COVID-19 full route between the intersections of Lyon and Greenwich streets and Townsend and 4th streets.
48 Quintara-24th Street	<ul style="list-style-type: none"> In response to feedback from Muni customers about more crosstown bus service and more access to hospitals such as SF General Hospital and Trauma Center, the 48 Quintara-24th Street would return with a modified, short route between West Portal Station and 20th and 3rd streets. This segment carries the highest proportion of riders. In order to operate with an improved frequency, the route would take a simplified alignment in Noe Valley, by using Diamond Street to get directly to Clipper Street from 24th Street. This means that the 48 Quintara-24th Street would not travel on Grandview, Douglass, 21st, or Hoffman streets. In order to achieve this alignment, five red zones (no parking or stopping) would be installed in the area near the Clipper Street and Diamond Street intersection and the Diamond Street and 24th Street intersection, which would result in a loss of 4 parking spaces. Note that as part of a separate project, the Muni Rail service changes (Case No. 2020-007183ENV), the existing inbound 48 Quintara-24th Street/L-Owl bus stop on the southeast corner of Ulloa Street at West Portal Avenue and the 48 Quintara-24th Street terminal on the southwest corner of Ulloa Street at West Portal Avenue would be relocated westward to the southside of Ulloa Street between West Portal Avenue and Wawona Street to support transfers from the TM line or S Shuttles to the new LK rail transit line.

49 Van Ness/Mission	<ul style="list-style-type: none"> To increase capacity, the 49 Van Ness/Mission route would be serviced by 60-foot motor coaches instead of 40-foot motor coaches.
54 Felton	<ul style="list-style-type: none"> The 54 Felton is currently operating between the intersections of San Jose and Geneva avenues and Newhall Street and Hudson Avenue. In response to feedback from Muni customers about more crosstown service and connectivity to the Oceanview neighborhood for trips to grocery stores and other essential services, the 54 Felton would return to its full pre-COVID-19 route between the Hunters Point neighborhood (at 3rd Street and Newhall Street) and Daly City BART in addition to restoring weekend service.
67 Bernal Heights	<ul style="list-style-type: none"> The 67 Bernal Heights is not currently operating. In response to feedback from residents of the Alemany Apartments, an affordable housing development on Ellsworth Street, the 67 Bernal Heights route would return to its full pre-COVID-19 route between the intersections of Ellsworth Street and Crescent Avenue and 24th and Mission streets.

Background

On February 25, 2020, Mayor London Breed issued a local health emergency for San Francisco under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of COVID-19 within the city.

On March 6, 2020, San Francisco Health Officer Tomas Aragon declared a health emergency due to the COVID-19 pandemic.

On March 16, 2020, Public Health order C19-07 was issued, requiring residents to Shelter-in-Place except for essential work or trips.

On March 31, 2020, Public Health order C19-07 was amended, requiring individuals to maintain six feet of social (physical) distance from individuals not in their household.

On July 30, 2020, the SFMTA City Traffic Engineer approved, as needed, the associated stop, street, and parking changes for the project.

On August 14, 2020, the department determined that the project was statutorily exempt under CEQA sections 21080(b)(4) and 21080(b)(10) and CEQA Guidelines sections 15269(c) and 15275 and issued a determination that no further environmental review was required for the Muni Bus Service Adjustments and Associated Changes.

On August 19, 2020, the Director of Transit approved the Muni Bus Service adjustments. This approval marked the approval of the whole of the project.

On August 20, 2020, the Planning Department posted the date of the approval for the Muni Bus Service adjustments by the SFMTA Director of Transit. This posting of the approval marked the start of the appeal period for the statutory exemption.

On September 14, 2020, an appeal of the statutory exemption determination was filed by Justin A. Zucker of Reuben, Junius & Rose on behalf of Safeway, Inc. (an appellant).

On September 21, 2020, an appeal of the statutory exemption determination was filed by David Pilpel (an appellant).

California Public Resources Code 21000 et seq. (CEQA)

California Public Resources Code 21080 specifies a list of activities for which CEQA does not apply. In particular, 21080 (b)(10) specifies that CEQA is not applicable to the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as defined in Section 360 of the Vehicle Code. Pursuant to this section, highway includes street.

CEQA Guidelines

Statutory Exemptions

In accordance with Article 18 Statutory Exemptions, CEQA Guidelines sections 15260 through 15285 list exemptions from CEQA granted by the California State Legislature.

CEQA Guidelines section 15269(c) states that specific actions necessary to prevent or mitigate an emergency are exempt from the requirements of CEQA. This section reflects the mandate in CEQA Section 21080(b)(4), that CEQA “does not apply to (...) specific actions to prevent or mitigate an emergency.” An “emergency,” in turn, is “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate attention to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” (CEQA Section 21060.3; CEQA Guidelines Section 15359).

CEQA Guidelines section 15275 states that CEQA does not apply to mass transit projects that would institute or increase passenger or commuter service on rail lines already in use.

Planning Department Responses

Two appeals of the statutory exemption determination for the project were timely filed. The concerns raised in each appeal letter are addressed below as they relate to the department’s determination that the project is statutorily exempt from CEQA. Where both appellants raise a similar concern, the responses below refer to those concerns in the plural (e.g., “appellants”). The responses below refer to the appellant in the case when one appellant raises a concern that the other appellant(s) did not (e.g., “appellant”).

Response 1: The project meets the definition of CEQA section 21080(b)(4) and CEQA Guidelines section 15269(c) Emergency Projects statutory exemption. In addition, the project meets the definition of CEQA section 21080 (b) (10) and CEQA Guidelines section 15275 Specified Mass Transit Projects statutory exemption.

COVID-19 is an emergency pursuant to CEQA section 21080(b)(4) and CEQA Guidelines section 15269(c)

On February 25, 2020, Mayor Breed issued a local health emergency under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of COVID-19 within the city. On March 4, 2020, Gavin Newsom, Governor of California, issued the Proclamation of a State of Emergency under section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to COVID-19. As stated above, on March 6, 2020 San Francisco Health Officer Tomas Aragon declared a local health emergency for the City and County of San Francisco. Health Orders were enacted to protect the public health and provide guidance and provisions to reduce the spread of COVID 19. Health Order No. C19-07 is the main order that states what activities are allowed and prohibited during the COVID-19 Emergency. It has been amended several times since it was first issued on March 16, 2020.

While a pandemic is not explicitly listed in the Public Resources Code section, a sudden and unexpected event such as the COVID-19 pandemic falls within the category of events that would be considered an emergency under the code and meets the intent of that code. COVID-19 is a sudden and unexpected occurrence. Within the span of a few days the whole world, the United States, California, and the Bay Area went from a handful of confirmed cases to many reported cases.² As a result, leading international, state, and local officials to declare a state of emergency. COVID-19 involves a clear and imminent danger and can cause damage to life and health. According to the Centers for Disease Control and Prevention, in the United States alone, as of October 16, 2020 approximately 7.8 million people have had confirmed COVID-19 cases and approximately 215,000 of these cases have resulted in death.³ Thus, COVID-19 is an emergency pursuant to CEQA section 21080(b)(4) and CEQA Guidelines section 15269

The SFMTA COVID-19 Muni Bus Service Adjustments and Associated Changes – August 22, 2020 project is responding to the COVID-19 public health emergency

The SFMTA has seen an increase in the number of riders that are using transit for their essential daily trips. Adding more frequent service on targeted routes would address crowding, pass-ups, and improve physical distancing between riders onboard buses. These adjustments would provide more space for people, helping them to adhere to the social distancing mandate which is enforceable under Health Order No. C19-07. Contrary to assertions by the appellants, the actions proposed by the SFMTA are necessary to prevent or mitigate an ongoing public health emergency.

None of the exclusions of CEQA Guidelines section 15269(c) apply

CEQA Guidelines section 15269(c) states that the statutory exemption for projects necessary to prevent or mitigate an emergency does not apply to “long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.” This exclusion does not apply

² San Francisco Department of Public Health. 2020. COVID-19 Cases and Deaths. Available online at <https://data.sfgov.org/stories/s/dak2-gvuj>. Accessed October 16, 2020.

³ Centers for Disease Control and Prevention. 2020. Coronavirus Disease 2019 – Cases in the U.S. Available online at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. Accessed September 9, 2020.

to the proposed COVID-19 Muni Bus Service Adjustments and Associated Changes – August 22, 2020 project, as elaborated below.

The emergency the project would respond to is ongoing. The February 25, 2020 proclamation of a local health emergency, March 4, 2020 Proclamation of a State of Emergency, and Health Order No. C19-07 (as amended) are still in effect. The SFMTA is responding to the ongoing nature of the emergency by modifying the COVID-19 Muni Core Service Plan to allow for additional transit vehicles for social distancing as transit ridership has grown. Furthermore, there is no anticipated date for the City to fully reopen and “remove all social distancing limits and other restrictions related to the COVID-19 response”.⁴ Therefore, the COVID-19 public health emergency can be considered ongoing, and the question of whether the project “has a high probability of occurring in the short-term” is moot.

Appellants raised concerns about potential traffic and pedestrian safety impacts, cumulative impacts, and unusual circumstances that would preclude an exemption determination. However, unlike a categorical exemption, a statutory exemption applies to any given project that falls under its definition, regardless of the project’s potential impacts to the environment. The department did not issue a categorical exemption for the project. As consideration of cumulative impacts and unusual circumstances only apply to projects evaluated for a categorical exemption, the department did not address these. In addition, evaluation of environmental effects is also not relevant for a project that qualifies for a statutory exemption.

Second, the project did not construct permanent infrastructure, and the changes can be adjusted or removed quickly. Any stop, street, and parking changes implemented as part of these bus service changes are temporary. Furthermore, the changes would expire within 120 days of the repeal of the City’s February 25, 2020 proclamation of a local health emergency due to COVID-19.

As shown above, the project meets the requirements of an emergency project statutory exemption under CEQA and none of the above-noted exclusions stated in CEQA Guidelines section 15269(c) apply. The City’s decision that the project fits within the definition of statutory exemption 15269(c) emergency projects is supported by substantial evidence in the record. Statutory exemptions are projects specifically excluded from CEQA consideration as defined by the State Legislature. These exemptions are delineated in Public Resources Code Section 21080 et seq and discussed in CEQA Guidelines Sections 15260-15285. A statutory exemption applies to any given project that fits within its definition, regardless of the project’s potential impacts to the environment including emergency access.

The SFMTA – COVID-19 Muni Bus Service Adjustments and Associated Changes – August 22nd, 2020 project is a specified mass transit project pursuant to CEQA section 21080 (b)(10) and CEQA Guidelines section 15275

California Public Resources Code 21080 specifies a list of activities for which CEQA does not apply. In particular, 21080 (b)(10) specifies that CEQA is not applicable to the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as

⁴ City and County of San Francisco. Step by Step Reopening San Francisco. Available online at <https://sf.gov/step-by-step/reopening-san-francisco>. Accessed October 16, 2020.

defined in Section 360 of the Vehicle Code. Pursuant to this section, highway includes street. In addition, CEQA Guidelines section 15275 states that CEQA does not apply to mass transit projects that would institute or increase “passenger or commuter service on rail lines or high-occupancy vehicle lanes”. As discussed above, the project would increase passenger service on the following bus lines to capacities higher than the existing COVID-19 Core Service Plan offers: 7 Haight-Noriega, 28 19th Ave, 37 Corbett, 44 O’Shaughnessy, 45 Union-Stockton, 48 Quintara-24th Street, 49 Van Ness/Mission, 54 Felton, and 67 Bernal Heights. For these reasons, the project meets the definition of a specific mass transit project statutory exemption and was properly exempted from CEQA.

Conclusion

The department has determined that the proposed project is statutorily exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of an emergency project and qualifies for the emergency project statutory exemption under CEQA and (2) none of the exclusions specified in CEQA Guidelines section 15269 prohibiting the use of this statutory exemption are applicable to the project. The appellant has not demonstrated that the department’s determination is not supported by substantial evidence in the record.

For the reasons stated above and in the August 14, 2020 CEQA statutory exemption determination and accompanying memo from SFMTA, the CEQA determination for this project complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemptions. The department therefore respectfully requests that the board uphold the CEQA statutory exemption determination and deny the appeal of the CEQA determination.