

File No. 230281

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date May 3, 2023

Board of Supervisors Meeting Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

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Completed by: Brent Jalipa Date April 27, 2023

Completed by: Brent Jalipa Date _____

1 [Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities
Commission]

2
3 **Ordinance amending the Administrative Code to modify the waivers of specified**
4 **contract-related requirements in the Administrative and Environment Codes for**
5 **electricity and related product transactions, authorize binding arbitration for contracts**
6 **with Investor Owned Utilities, and increase the annual expenditure limit for energy**
7 **procurements from \$150,000,000 to \$200,000,000.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. Chapter 21 of the Administrative Code is amended by revising
17 Chapter 21.43, to read as follows:

18 **SEC. 21.43. PURCHASE AND SALE OF CERTAIN ELECTRICITY AND RELATED**
19 **PRODUCTS BY THE PUBLIC UTILITIES COMMISSION.**

20 (a) **Findings.**

21 * * * *

22 (12)→ In order for CleanPowerSF and Hetch Hetchy Power to meet State law
23 requirements for RA, electricity-related products that ensure sufficient electric generation resources
24 are available to meet unusually high levels of demand, and the Renewable Portfolio Standard (RPS),
25 the state’s program for continuously increasing purchases from renewable energy facilities, the PUC
purchases RA and RPS from a variety of suppliers, but on occasion must rely on purchases from

1 Investor Owned Utilities (IOUs) in California. The IOUs in California, PG&E, Southern California
2 Edison, and San Diego Gas & Electric, all require RA and RPS buyers to agree to binding arbitration
3 when purchasing these products.

4 (13) In Ordinance No. ~~08-18227-18~~, the Board of Supervisors authorized binding
5 arbitration provisions in certain limited circumstances and approved three PG&E agreements with
6 binding arbitration provisions. In order to reliably meet the State's legal requirements for RA and RPS
7 compliance, it is imperative to authorize the PUC to include binding arbitration provisions in
8 agreements for RA and/or RPS with California IOUs.

9 * * * *

10 (c) **Delegation of Approval Authority under Charter Section 9.118.** Pursuant to
11 its authority under Charter Section 9.118, the Board of Supervisors delegates to the General
12 Manager of the PUC authority to enter into purchases of power and related products using
13 contracts with terms in excess of 10 years or requiring expenditures of 10 million dollars or
14 more including amendments to such agreements with an impact of greater than \$500,000, so
15 long as the contract term, including any amendments, does not exceed 25 years. The annual
16 expenditure for all agreements entered under this subsection (c) may not exceed ~~150 million~~
17 ~~dollars~~ 200 million dollars per year. This annual expenditure cap may be increased by Board of
18 Supervisors Resolution.

19 * * * *

20
21 (f) **Waiver of Certain Contract-Related Requirements.** The Board of Supervisors finds
22 the waivers identified below to be reasonable and in the public interest, for individual contracts or an
23 entire procurement process, wWhere the General Manager of the PUC finds and documents in
24 writing both that the ~~transaction~~ agreement or solicitation represents the best opportunity
25 available to the City to obtain essential services and products in a manner beneficial to the

1 City, and that it is not feasible to add all standard City contract provisions to the agreement or
2 solicitation; ~~the Board of Supervisors finds the following waivers to be reasonable and in the public~~
3 ~~interest, for contracts~~ these waivers apply to agreements procured through competitive bidding
4 processes that include language requiring compliance with all applicable federal, state, and
5 local laws:

- 6 (1) Nondiscrimination in contracts (Admin. Code Chapter 12B);
- 7 (2) MacBride Principles (Admin. Code Chapter 12F);
- 8 (3) Local business enterprise utilization and non-discrimination in contracting
9 ordinance (Admin. Code Chapter 14B);
- 10 (4) Consideration of criminal history in hiring (Admin. Code Section 12T);
- 11 (5) Consideration of salary history in hiring (Admin. Code Section 12K);
- 12 (6) Prohibition on contracting in certain states (Admin. Code Section 12X);
- 13 (7) First source hiring (Admin. Code Chapter 83);
- 14 (8) Competitive bidding requirements (Admin. Code Section 21.1); ~~and~~
- 15 (9) Tropical hardwood and virgin redwood ban (Environ. Code Chapter 8);~~;~~
- 16 (10) Minimum Compensation Ordinance (Admin. Code Chapter 12P);
- 17 (11) Health Care Accountability Ordinance (Admin. Code Chapter 12Q);
- 18 (12) Public access to meetings and records of non-profit organizations (Admin. Code
19 Section 12L.2);
- 20 (13) Sweatfree contracting (Admin. Code Section 12U.4); and
- 21 (14) Food service waste reduction (Environ. Code Section 1605).

22 **(g) Delegation of Approval of Binding Arbitration for RA and/or RPS Agreements with**
23 **IOUs. The Board of Supervisors finds it is reasonable and in the public interest to delegate to the**
24 **General Manager of the PUC the authority to enter into contracts for RA and/or RPS from California**
25

1 IOU's with binding arbitration provisions, and hereby delegates said authority to the General Manager
2 of the PUC.

3 ~~(h)~~~~(g)~~ **Power and Related Products and Services.** For purposes of the delegation,
4 authorizations, and waivers in this Section 21.43, power and related products and services
5 shall include power supplies, RA, the conveyance or transmission of same, or ancillary
6 services such as spinning reserve, voltage control, as required for assuring reliable services in
7 accordance with good utility practices and applicable laws.

8 ~~(i)~~~~(h)~~ **Projects on City Property.** The delegation, authorizations, and waivers in Section
9 21.43 shall not apply to projects being constructed on City property.

10 ~~(j)~~ **Sunset Date.** This Section 21.43 shall expire by operation of law on July 1,
11 2025. Upon expiration of this Section, the City Attorney is authorized to remove this Section
12 from the Administrative Code.

13 Section 2. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DAVID CHIU, City Attorney

20
21 By: /s/
22 MARGARITA GUTIERREZ
23 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 4/26/2023)

[Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities Commission]

Ordinance amending the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative and Environment Codes for electricity and related product transactions, authorize binding arbitration for contracts with Investor Owned Utilities and increase the annual expenditure limit for energy procurements from \$150,000,000 to \$200,000,000.

Existing Law

Chapter 21.43 of the San Francisco Administrative Code delegates authority to the General Manager of the Public Utilities Commission (PUC) to enter contracts for the purchase of electricity and related services that exceed ten years in duration for more than 10 million dollars. The ordinance made the procurement approval subject to several conditions, including: the duration of any individual contract does not exceed 25 years, inclusive of contract extensions, and; the total cost of the contracts does not exceed 150 million dollars per year. Chapter 21.43 also allows the General Manager to waive certain City contracting requirements for these agreements if it is not feasible to include those requirements.

Amendments to Current Law

Chapter 21.43 would amend the Administrative Code by increasing the annual expenditure maximum amount to 200 million dollars per year. The ordinance would allow the General Manager to waive certain City contracting requirements for these agreements if it is not feasible to include those requirements. The ordinance would also authorize the General Manager to enter into agreements with binding arbitration provisions with California investor owned utilities when buying Resource Adequacy (RA) and Renewable Portfolio Standard (RPS) products.

Background Information

The PUC operates two power businesses—its municipal electric utility, Hetch Hetchy Power (HHP), and its community aggregation program, CleanPowerSF (CPSF). HHP mostly uses clean hydro power from Hetch Hetchy and renewable energy from City facilities, but it sometimes needs to engage in other purchases and sales. CPSF obtains all of its energy through purchases, to meet the needs of enrolled San Franciscans (380,000 accounts) under PG&E tariffs approved by the California Public Utilities Commission (CPUC). PG&E provides transmission, distribution and billing service for CPSF customers. The program has grown from 8,000 customers to 380,000 customers in five years. CleanPowerSF competes for

wholesale power supplies in the highly competitive and highly volatile California Independent System Operator energy market and competes with PG&E and private energy suppliers for customers in San Francisco.

CPSF must enter into a large number of contracts for a variety of electricity products and services under compressed timelines to comply with state law and CPUC regulations. This makes Board approval of every power and related service contract in the usual manner neither practical nor possible.

Due to growth of the programs and the number of energy procurements needed in the future, PUC sought and the Board approved the Section 21.43 which codified delegated authority and contract waivers for CPSF and HHP procurements through June 30, 2025.

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<p>Item 1 File 23-0281 <i>(Continued from 4/26/23 meeting)</i></p>	<p>Department: Public Utilities Commission (PUC)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative and Environment Codes for electricity and related product transactions, authorize binding arbitration for contracts with investor-owned utilities, and increase the annual expenditure limit for energy procurements from \$150 million to \$200 million.

Key Points

- In July 2022, the Board of Supervisors approved an ordinance to add Chapter 21.43 to the Administrative Code, which approves form electricity purchase and sale contracts for the SFPUC, grants Administrative and Environment Code waivers for these contracts, and delegates authority to the SFPUC General Manager under Charter Section 9.118 to execute certain contracts with terms in excess of 10 years, or requiring expenditures of \$10 million or more, or having anticipated revenues of at least \$1 million, for a period of three years through June 30, 2025.
- Due to rapid increases in wholesale energy market prices, SFPUC believes that the \$150 million annual expenditure limit is no longer sufficient to purchase the electricity products needed for Hetch Hetchy Power and CleanPowerSF and is requesting that the limit be increased to \$200 million. The proposed ordinance would also waive additional provisions of the Administrative and Environment Codes, which are not included in form energy contracts used by SFPUC, as well as authorize binding arbitration in Resource Adequacy and related products and services contracts with investor-owned utilities, which is a standard provision in these contracts.

Fiscal Impact

- The authority delegated by the proposed ordinance would be used to enter into contracts with total annual expenditures of up to \$200 million, an increase of \$50 million from the existing authority. Contracts may have a total term length of up to 25 years. Therefore, a total of \$5 billion in contract expenditures may be authorized by the proposed ordinance. This is an increase of \$1.25 billion over the existing total authorized expenditures of \$3.75 billion allowed through the \$150 million annual limit.

Recommendation

- Because the proposed ordinance waives (1) additional standard contracting provisions required by the City’s municipal codes, and (2) the Board of Supervisors’ authority under Charter Section 9.118, authorizing the SFPUC to enter into contracts longer than 10 years or in an amount of \$10 million or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

In July 2022, the Board of Supervisors approved an ordinance to add Chapter 21.43 of the Administrative Code, which approves form electricity purchase and sale contracts for the San Francisco Public Utilities Commission (SFPUC), grants Administrative and Environment Code waivers for these contracts, and delegates the SFPUC General Manager authority under Charter Section 9.118 to execute certain contracts with terms in excess of 10 years or requiring expenditures of \$10 million or more or having anticipated revenues of at least \$1 million, for a period of three years through June 30, 2025 (File 22-0652).

SFPUC requested the ordinance because CleanPowerSF and Hetch Hetchy Power must enter into contracts for electricity products under compressed timelines to comply with state law and California Public Utilities Commission (CPUC), California Energy Commission (CEC), and California Independent System Operator (CAISO) rules and regulations, such as Resource Adequacy requirements.¹ The energy market is highly volatile and increasingly competitive, with six Investor-Owned Utilities, 71 Publicly Owned Electric Utilities, 24 Community Choice Aggregation (CCA) programs, and 19 Energy Service Providers supplying wholesale customers and retail customers (as of July 2022). The time-limited pricing typically offered in the industry cause the SFPUC to size commitments to the authority of the General Manager to secure power supplies on market timelines, even when the SFPUC is aware that a larger purchase commitment may have produced more favorable outcomes for ratepayers were the SFPUC able to execute a contract within the time-limited window. As such, SFPUC staff believes the Board of Supervisors approval is not always feasible or convenient.

Additionally, the ordinance authorized SFPUC to use two widely used industry standard agreements (the Western Systems Power Pool Agreement and Edison Electric Institute Master Agreement), the SFPUC’s purchase, storage, and sale agreements, and form contracts developed by California Community Power (CC Power).² The form agreements do not include provisions required under the City’s Administrative Code, such as: (1) non-discrimination in contracts (Chapter 12B); (2) MacBride Principles (Chapter 12F); (3) local business enterprise utilization and non-discrimination in contracting (Chapter 14B); (4) consideration of criminal history in hiring (Chapter 12T); (5) consideration of salary history in hiring (Chapter 12K); (6) prohibition on

¹ State law requires all electric service providers, including CleanPowerSF and Hetch Hetchy Power, to maintain certain quantities of Resource Adequacy (RA) to ensure sufficient electric generation resources to meet unusually high levels of consumer demand.

² CC Power is a Joint Powers Authority comprised of nine California CCA programs, including CleanPowerSF.

contracting in certain states (Chapter 12X); (7) first source hiring (Chapter 83); (8) competitive bidding requirements (Section 21.1); and (9) tropical hardwood and virgin redwood ban (Environment Code Chapter 8). These requirements were waived under the ordinance.

SFPUC reports that wholesale energy market prices have increased faster than anticipated due to supply chain delays, Russia's invasion of Ukraine, heat waves, and drought conditions (prior to December 2022) impacting hydroelectric energy outputs. We noted these impacts in a March 2023 amendment to SFPUC's scheduling coordinator services contract with APX Inc. (File 23-0091).³ SFPUC's contract originally had an amount not to exceed \$134,742,800 over a five-year term, or approximately \$27 million per year in projected expenditures. Due to rising costs, and after consulting trade industry projections, SFPUC requested an amendment less than one year later to increase the not-to-exceed amount to \$895,742,800 over the same five-year term, or approximately \$179 million per year, a 565 percent increase. As such, the SFPUC Power Enterprise no longer believes that the annual expenditure authority of \$150 million is sufficient to meet operational needs and requests that this limit be increased to \$200 million.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Chapter 21.43 of Administrative Code to modify the waivers of specified contract-related requirements in the Administrative and Environment Codes for electricity and related product transactions, authorize binding arbitration for contracts with investor-owned utilities, and increase the annual expenditure limit for energy procurements from \$150 million to \$200 million.

Waiver of Administrative and Environment Code Requirements

As noted above, the previous ordinance (File 22-0652) authorized SFPUC to waive several Administrative and Environment Code provisions that are not included in power purchasing form contracts used by SFPUC. The proposed ordinance would expand these waivers to include the following: (1) Minimum Compensation Ordinance (Administrative Code Chapter 12P); (2) Health Care Accountability Ordinance (Administrative Code Chapter 12Q); (3) public access to meetings and records of non-profit organizations (Administrative Code Section 12L.2); (4) sweatfree contracting (Administrative Code Section 12U.4); and (5) food service waste reduction (Environment Code Section 1605).

Binding Arbitration

The proposed ordinance would authorize SFPUC to enter into contracts for resource adequacy and related products and services from California investor-owned utilities with binding arbitration provisions. Under binding arbitration, a dispute between two parties is decided by a neutral arbitrator rather than in court before a judge or jury, and parties signing a binding arbitration agreement forfeit their rights to go to court or appeal an arbitrator's decision. According to Michael Hyams, SFPUC Deputy Assistant General Manager of Power, SFPUC is

³ The SFPUC does not meet the CAISO requirement for a "scheduling coordinator," an entity that is authorized to complete power transactions on the CAISO network and as able to make payments to CAISO for power transactions, so SFPUC has contracted for these services.

requesting this authority because binding arbitration is a standard provision in form contracts with investor-owned utilities.⁴

Increase of Expenditure Authority

The proposed ordinance would increase the annual expenditure limit for energy procurements under authority delegated to SFPUC from \$150 million to \$200 million. As noted above, this is due to rapid increases in wholesale energy market prices and SFPUC's belief that the \$150 million annual expenditure limit is no longer sufficient to purchase the electricity products needed for Hetch Hetchy Power and CleanPowerSF. The ordinance would retain its requirement that SFPUC provide quarterly reports to the Board of Supervisors with the duration, product purchased, and cost of contracts entered into under the delegated authority, as well as annual reports with program costs, the rates charged to CleanPowerSF customers to recover those costs, and a comparison of those rates to PG&E rates.

FISCAL IMPACT

The authority delegated by the proposed ordinance would be used to enter into contracts with total annual expenditures of up to \$200 million, an increase of \$50 million from the existing authority. Contracts may have a total term length of up to 25 years. Therefore, a total of \$5 billion in contract expenditures may be authorized by the proposed ordinance. This is an increase of \$1.25 billion over the existing total authorized expenditures of \$3.75 billion allowed through the \$150 million annual limit.

According to Deputy Assistant General Manager Hyams, SFPUC has entered into nine contracts under the existing authority with total expenditures of up to \$830 million. SFPUC projects total FY 2022-23 power contract expenditures of \$276.7 million for CleanPowerSF and \$19 million for Hetch Hetchy Power, for total expenditures of approximately \$295.7 million. For FY 2023-24, the SFPUC projects total contract expenditures of approximately \$321.6 million for CleanPowerSF and \$30 million for Hetch Hetchy Power, for total expenditures of approximately \$351.6 million.

POLICY CONSIDERATIONS

Waiver of Administrative and Environment Code Requirements

As noted above, the proposed ordinance would delegate authority to the SFPUC General Manager to waive additional standard contract and City code provisions. According to SFPUC, the City's standard contract terms identified in the proposed ordinance are not standard electric industry terms and many energy sellers reject such terms or will mark up the cost of energy to account for what they may consider a non-market condition and liability.

Increase of Expenditure Authority

The proposed ordinance would increase the annual expenditure limit for energy procurements under authority delegated to SFPUC from \$150 million to \$200 million. Since the SFPUC

⁴In 2018, the Board of Supervisors authorized SFPUC to enter into power contracts with binding arbitration (File 18-0708). Binding arbitration was also included in recent SFPUC power contracts with PG&E (File 19-0997) and Southern California Edison (File 20-1280).

Commission has also delegated its approval authority to the General Manager, the terms of power purchase and sale agreements executed under this authority may not be publicly visible prior to the SFPUC entering into the agreements. As noted above, the ordinance would retain its requirement that SFPUC provide quarterly reports to the Board of Supervisors with the duration, product purchased, and cost of contracts entered into under the delegated authority, as well as annual reports with program costs, the rates charged to CleanPowerSF customers to recover those costs, and a comparison of those rates to PG&E rates. Since the Board of Supervisors approved the ordinance adding Chapter 21.43, the SFPUC has submitted three quarterly reports. Additionally, the SFPUC transmitted the most recent CleanPowerSF annual report to the Clerk of the Board on March 6, 2023.

Because the proposed ordinance waives (1) additional standard contracting provisions required by the City's municipal codes, and (2) the Board of Supervisors' authority under Charter Section 9.118, authorizing the SFPUC to enter into contracts longer than 10 years or in an amount of \$10 million or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Item 6 File 23-0281	Department: Public Utilities Commission (PUC)
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Recommendation

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³ The SFPUC does not meet the CAISO requirement for a "scheduling coordinator," an entity that is authorized to complete power transactions on the CAISO network and as able to make payments to CAISO for power transactions, so SFPUC has contracted for these services.

Assistant General Manager of Power, SFPUC is requesting this authority because binding arbitration is a standard provision in form contracts with investor-owned utilities.⁴

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POLICY CONSIDERATION

Waiver of Administrative and Environment Code Requirements

As noted above, the proposed ordinance would delegate authority to the SFPUC General Manager to waive additional standard contract and City code provisions. According to SFPUC, the City’s standard contract terms identified in the proposed ordinance are not standard electric industry terms and many energy sellers reject such terms or will mark up the cost of energy to account for what they may consider a non-market condition and liability.

Increase of Expenditure Authority

The proposed ordinance would increase the annual expenditure limit for energy procurements under authority delegated to SFPUC from \$150 million to \$200 million. Since the SFPUC

⁴In 2018, the Board of Supervisors authorized SFPUC to enter into power contracts with binding arbitration (File 18-0708). Binding arbitration was also included in recent SFPUC power contracts with PG&E (File 19-0997) and Southern California Edison (File 20-1280).

Commission has also delegated its approval authority to the General Manager, the terms of power purchase and sale agreements executed under this authority may not be publicly visible prior to the SFPUC entering into the agreements. As noted above, the ordinance would retain its requirement that SFPUC provide quarterly reports to the Board of Supervisors with the duration, product purchased, and cost of contracts entered into under the delegated authority, as well as annual reports with program costs, the rates charged to CleanPowerSF customers to recover those costs, and a comparison of those rates to PG&E rates. Since the Board of Supervisors approved the ordinance adding Chapter 21.43, the SFPUC has submitted three quarterly reports. Additionally, the SFPUC transmitted the most recent CleanPowerSF annual report to the Clerk of the Board on March 6, 2023.

Because the proposed ordinance waives (1) additional standard contracting provisions required by the City's municipal codes, and (2) the Board of Supervisors' authority under Charter Section 9.118, authorizing the SFPUC to enter into contracts longer than 10 years or in an amount of \$10 million or more without further Board of Supervisors approval, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

From: [Spitz, Jeremy M](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Aguilar, Jesica \(PUC\)](#); [Oliveros Reyes, Jennifer \(PUC\)](#); [GUTIERREZ, MARGARITA \(CAT\)](#)
Subject: SFPUC- Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities Commission
Date: Monday, March 13, 2023 9:34:56 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[2023 Delegation Ordinance Amendment for BOS.pdf](#)
[2023 Delegation Ordinance Amendment for BOS.docx](#)
[2023 Del-Ord Amd Leg Digest.docx](#)

Dear Clerk Team,

Attached is a proposed ordinance amending Administrative Code Section 21.43. The electronic attachments are:

- Proposed ordinance, word file and PDF
- Legislative Digest

I am the staff contact for this ordinance. Please let me know if you have any questions.

Sincerely,

Jeremy Spitz

Local and Regional Policy and Government Affairs Manager
San Francisco Public Utilities Commission
Cell: 415-214-5296
Pronouns: he, him, his
sfpuc.org

