

From: [Mary Miles](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: 8-20-20 NOTICE OF APPEAL
Date: Thursday, August 20, 2020 4:41:44 PM
Attachments: [8-20-20 NOTICE OF APPEAL SLOW STREETS- PHASE 3.pdf](#)

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FROM:
Mary Miles (SB #230395)
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TO:
Angela Calvillo, Clerk
San Francisco Board of Supervisors
City Hall, Room 244
San Francisco, CA 94102
bos.legislation@sfgov.org

DATE: August 20, 2020

RE: Notice of Appeal of Exemption No. 2020-006251ENV

Attached please find in pdf format Appellant's Notice of Appeal (Appeal letter) to the Board of Supervisors of Exemption No. 2020-006251ENV ("Slow Streets, Phase 3"), with Attachments A and B.

Appellant files this Appeal electronically, since the Board of Supervisors' office is closed.

Per information provided by the Clerk of the Board of Supervisors, Appellant was advised that payment is not due until the Board resumes scheduling and schedules hearing on this Appeal. Appellant therefore will await further advice from the Clerk.

Appellant has attached an Application for Fee Waiver along with this Notice of Appeal (see last two pages of attached).

If there is any problem with the attached filing, or if you need any other documents, please advise me by return e-mail. Please also advise that the Board of Supervisors has received this Appeal.

Thank you.

Mary Miles
Attorney at Law
364 Page St., #36
San Francisco, CA 94102

FROM:

Mary Miles (SB #230395)
Attorney at Law for
Coalition for Adequate Review
364 Page St., #36
San Francisco, CA 94102

TO:

Angela Calvillo, Clerk, and
San Francisco Board of Supervisors
City Hall, Room 244
San Francisco, CA 94102

DATE: August 20, 2020

BY E-MAIL TO: bos.legislation@sfgov.org

**NOTICE OF APPEAL OF CEQA EXEMPTION OF
"SLOW STREETS PHASE 3"**

PLEASE TAKE NOTICE that Coalition for Adequate Review hereby appeals to the San Francisco Board of Supervisors the environmental determination of the San Francisco Planning Department of the "Slow Streets Phase 3" Project ("the Project"), and the implementation of that Project by the San Francisco Municipal Transportation Authority ("MTA") with no opportunity for review by the Board of Supervisors or meaningful public participation.

The Planning Department's Exemption No. 2020-006251ENV dated July 16, 2020 is attached as **EXHIBIT A**. The MTA Board approved "Phase 3" on July 21, 2020, with its Resolution No. 200721-069, attached as **EXHIBIT B**. Appellant submitted public comment to MTA Board on Slow Streets Phase 3 on July 20, 2020.

Grounds for this Appeal lie in the California Environmental Quality Act ("CEQA") (Pub. Res. Code §§21000 *et seq.*, and in rules, regulations, and case law. Appellant will submit briefing and other documents after a hearing is scheduled by the Board.

In addition to the many streets already closed by earlier "phases" of MTA's Slow Streets Project, "Slow Streets Phase 3" closes all or parts of several streets to motor vehicle travel, including: 20th Street, Arkansas Street, Arlington Street, Broderick Street, Cabrillo Street, Capitol Avenue, Cayuga Avenue, Clay Street, Duncan Street, Farallones Street, Hearst Avenue, Holly Park Circle, Lakeview/Shields Street, Mariposa Street, Minnesota Street, Noe Street, Pacific Avenue, Pierce Street, and Tompkins Avenue. (Exh. A p. 1-2.) "Phase 3" blocks motor vehicle traffic with physical obstructions, allowing only "foot and bicycle traffic." (Exh. A p. 1-2.)

The "Slow Streets Phase 3" exemption document claims that "Phase 3" is statutorily exempt under an "emergency" CEQA exemption under 14 Cal.Code Regs. ("CEQA Guidelines"), §15269(c).) Like other parts of Slow Streets, however, "Phase 3" does not qualify for an emergency exemption under CEQA, which only applies to "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services . . . [and] such occurrences as fire, flood, earthquake, or other soil or geologic movements, . . . riot, accident, or sabotage." (Pub.Res. Code §21060.3 ["Emergency"].)

Absent substantial evidence that each street change in the Project meets that strict definition, City fails to establish any emergency exemption justifying the Project. There is no such evidence in the record before MTA's Phase 3 approval. "Slow Streets Phase 3" therefore does not qualify for an emergency exemption under CEQA. Bicycling and walking in the middle of streets do not prevent or mitigate an emergency under CEQA.

Planning's exemption document claims with no supporting evidence that "many pedestrians are choosing to walk in the street" and that bicyclists and pedestrians need entire streets for walkways and bikeways to maintain social distancing of six feet for essential trips. (Exh. A, p. 1.) MTA and Planning provide *no* evidence supporting that bicyclists and pedestrians on those streets are making *essential* trips or that closing public streets to motor vehicles is necessary for their *essential* trips.

The Phase 3 Exemption document falsely claims that "[t]he project would not include any changes to the existing number of travel lanes, bicycle and pedestrian facilities, or loading/ parking." (Exh. A, p.2.) That statement is false, because the Project in fact obstructs affected streets with barricades and signs prohibiting through travel by motor vehicles, and it changes those public streets into pedestrian walkways and bicycle lanes.

Nor is the Slow Streets Project presumably temporary, since the MTA provides *no* end date for this Project and claims that it can and will make this Project and all its changes permanent. The MTA also makes no commitment to conduct environmental review and provide meaningful public participation in that review.

The Slow Streets Phase 3 Project is also not as claimed *categorically* exempt from CEQA under Guidelines §15301, since it is not a "minor alteration" but is in fact a major change of use of those public streets. Also, since the Project may have direct, indirect, and cumulative significant impacts on traffic, air quality, GHG, energy consumption, emergency services, and public safety, it is not categorically exempt from CEQA.

Further, Phase 3 cannot be categorically exempt under section 15301, because the claimed emergency must be a sudden occurrence and therefore cannot be a change to an "existing" facility.


The Exemption's claimed statutory emergency exemption also presents an exception to the claimed categorical exemption, since an emergency under CEQA's definition would be an "unusual circumstance." The cumulative impacts of many street closures to motor

vehicles is also an exception to the asserted categorical exemption. The claimed emergency exemption and claimed Class 1 categorical exemption are contradictory.

CONCLUSION

"Slow Streets Phase 3" does not qualify for a statutory emergency exemption under CEQA and it is not categorically exempt.

Since the Slow Streets "Phase 3" Project, does not meet the requirements for the claimed exemption, this Board should reverse the Planning Department's exemption and MTA's approval and implementation of the Project.



Mary Miles

DATE: August 20, 2020

ATTACHMENTS/EXHIBITS:

- A** Planning Department's Exemption No. 2020-006678ENV dated July 16, 2020
- B** MTA Board of Directors Resolution No. 200721-069, dated July 21, 2020

ATTACHMENT A



Slow Streets, Phase 3

As a result of the coronavirus (COVID-19) public health emergency, the San Francisco Municipal Transportation Agency (SFMTA) has created limited “Slow Streets” to manage traffic speeds and allow roadways to be safely used as a shared space for foot and bicycle traffic, while also providing adequate space for travelers to maintain 6 feet separation (the project) . This space is needed for essential walk and bike travel while transit service levels are temporarily reduced. Vehicle traffic is allowed on these streets but is limited to local (e.g. access for residents and businesses, to the extent present) and emergency vehicle access.

With Muni service reduced, many San Francisco residents need to walk and take other travel modes to make essential trips. However, they cannot practically maintain the six feet of social distance required by the city’s Public Health orders C19-07b on many sidewalks, park paths, and bikeways, especially when passing queues that may exist outside grocery stores and other essential services. Currently, many pedestrians are choosing to walk in the street and are at a higher risk of being in a collision with a vehicle in the roadway. There is also data showing drivers are operating at higher and unsafe speeds at this time, which increases the risk for severe injuries to individuals walking in a collision.

The Slow Street treatment would include placement of materials such as cones, A-frames, plastic traffic diverters and delineators to slow and discourage vehicular through traffic in order to enable people to safely walk, run, or bike and maintain six feet social distancing in the streets. City and County of San Francisco staff would monitor each street where implemented to ensure the transportation benefits of Slow Streets are not undermined by crowding and congregation. The following segments have been reviewed by SFMTA staff for feasibility and would not adversely affect operations on Muni routes. The Slow Street corridors would be reviewed by the Transportation Advisory Staff Committee (TASC) or COVID-TASC, including representatives from the San Francisco Fire Department prior to project approval.

The street segments proposed for Slow Street Phase 3 include:

- 20th Street from San Bruno Avenue to Pennsylvania Avenue
- Arkansas Street from 23rd to 17th streets
- Arlington Street from Roanoke to Randall streets
- Broderick Street from O’Farrell to Page streets
- Cabrillo Street from 45th to 23rd avenues
- Capitol Avenue from Ocean Avenue to Alemany Boulevard
- Cayuga Avenue from Naglee Avenue to Rousseau Street
- Clay Street from Arguello Boulevard to Steiner Street
- Duncan Street from Diamond Heights Boulevard to Tiffany Avenue

- Farallones Street from Orizaba Avenue to San Jose Avenue
- Hearst Avenue from Ridgewood Avenue to Baden Street
- Holly Park Circle
- Lakeview/Shields Street from Beverly Street to Brighton Avenue
- Mariposa Street from Texas to Mississippi streets
- Minnesota Street from Mariposa to 22nd streets
- Noe Street from 23rd Street to Duboce Avenue
- Pacific Avenue from Steiner to Gough streets
- Pierce Street from Hayes Street to Duboce Park (Avenue)
- Tompkins Avenue from Andover Street to Peralta Avenue

The project would not include any changes to the existing number of travel lanes, bicycle and pedestrian facilities, or loading/parking. The proposed project would include installation of movable barriers to provide safe areas for physical distancing while walking and bicycling for essential trips or recreation. These elements fit within the “installation or reconfiguration of traffic calming devices” category of the Eligibility Checklist: CEQA Section 21099 – Modernization of Transportation Analysis. The project is thereby presumed to not significantly impact VMT, and no further VMT analysis is required. Phase 3 of Slow Streets would not create potentially hazardous conditions for people driving because the placement of traffic calming devices and restrictions to through traffic would slow and limit the number of vehicles thereby reducing the potential for conflicts.

None of the Slow Streets segments are on Muni routes (existing routes, pre-COVID emergency or COVID Core Service). Commercial or passenger loading facilities would not be removed as part of the project, thus no loading impacts would result. There would be no construction or excavation as part of the project as the project requires only the placement of movable surface barriers.

There may be other planned projects in the vicinity of the Slow Streets Phase 3 segments; however, SFMTA would coordinate with those project sponsors so that construction and Slow Streets would not occur simultaneously on the same segment. Slow Streets barricades would be moved in the case of overlapping infrastructure project construction.

The designation by the SFMTA of certain San Francisco streets as Slow Streets is to help facilitate members of the public maintaining six feet social distance while making essential trips by all modes in order to prevent and mitigate a public health emergency. The changes implemented as part of the project are temporary in nature, and will expire 120 days after the retraction of the City’s proclamation of the COVID-19 local emergency (dated February 25, 2020).

Approval Action:

Approval by the SFMTA Board

Statutorily Exempt pursuant to CEQA Guidelines Section 15269(c): Emergency Projects, specific actions necessary to prevent or mitigate an emergency.

Categorically exempt pursuant to CEQA Guidelines Section 15301(c): Minor alteration of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails and similar facilities, involving negligible or no expansion of existing or former use.

Melinda Hue 7/1/20

Melinda Hue Date
San Francisco Municipal Transportation Agency

Laura C. Lynch 7/1/20

Laura Lynch Date
San Francisco Planning Department

ATTACHMENT B

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 200721-069

WHEREAS, On January 30, 2020, the World Health Organization declared the COVID-19 outbreak a public health emergency of international concern; on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States; and, on February 25, 2020, San Francisco Mayor London Breed, issued a Proclamation Declaring the Existence of a Local Emergency within the City in response to the pandemic (COVID-19 Emergency), and,

WHEREAS, The Centers for Disease Control and Prevention (CDC) issued guidance to local and state jurisdictions and determined that the virus presents a serious public health threat, requiring coordination among state and local departments to ensure readiness for potential health threats associated with the virus; and,

WHEREAS, The San Francisco Department of Public Health (DPH), the Department of Emergency Management, and other City partners have been working successfully to implement CDC guidelines, but now require additional tools and resources to protect the public health given the current state of the epidemic and the need for a sustained response; and

WHEREAS, On March 16, 2020, San Francisco's Health Officer issued a Public Health Order requiring that residents remain in place, with the only exception being for essential needs which significantly impacted San Francisco's multimodal transportation system, and required the SFMTA to reduce transit service per the COVID-19 Muni Core Service Plan, and on May 28, 2020, the Mayor released a plan and timeline, informed by the Economic Recovery Task Force, to safely reopen San Francisco; and,

WHEREAS, The San Francisco Municipal Transportation Agency, in response to the COVID-19 Emergency and the City's reopening timeline, developed a Transportation Recovery Plan (TRP) that serves as a framework for temporary improvements to the multimodal transportation system; and,

WHEREAS, The Slow Streets Program, a component of the TRP, would install temporary barricades and signage at designated intersections on the additional corridors to provide more space for socially distant essential travel by bicycling or walking, and exercise; and,

WHEREAS, The San Francisco Municipal Transit Agency has proposed temporary road closures to through traffic as part of the Slow Streets Program and, under Vehicle Code Section 21101(e) finds that such temporary road closures to through traffic are necessary for the safety and protection of persons who are using the street under the Program during the COVID-19 Emergency; and,

WHEREAS, The San Francisco Municipal Transportation Agency is committed to making San Francisco a Transit First city that prioritizes non-private automobile transportation; and,

WHEREAS, The following corridors are proposed for closure to through traffic and for inclusion in the Slow Streets Program:

1. 20th Street from San Bruno to Pennsylvania,
2. Arkansas from 23rd to 17th streets,
3. Arlington from Roanoke to Randall,
4. Cabrillo Street from 23rd to 45th avenues,
5. Cayuga from Naglee to Rousseau,
6. Clay from Arguello to Steiner,
7. Duncan from Diamond Heights to Tiffany,
8. Farallones from Orizaba to San Jose,
9. Heart from Ridgewood to Baden,
10. Holly Park Circle,
11. Mariposa from Texas to Mississippi,
12. Minnesota from Mariposa to 22nd Street,
13. Noe from 23rd Street to Duboce,
14. Pacific from Steiner to Gough,
15. Pierce from Hayes to Duboce, and
16. Tompkins from Andover to Peralta; and,

WHEREAS, The temporary improvements of the Slow Streets program shall include a thorough and transparent evaluation process to determine the effectiveness of the changes, including soliciting stakeholder feedback, collecting and analyzing safety and performance data, and posting evaluation results on the SFMTA website; and,

WHEREAS, The proposed traffic modifications will be temporary in nature and will expire 120 days after the termination or expiration of the COVID-19 Emergency; and,

WHEREAS, The proposed additional Slow Streets is subject to the California Environmental Quality Act (CEQA); CEQA provides a statutory exemption from environmental review for emergency projects pursuant to Title 14 of the California Code of Regulations Section 15269; CEQA provides a categorical exemption for operation, repair, maintenance, or minor alteration of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities pursuant to Title 14 of the California Code of Regulations Section 15301; and,

WHEREAS, On July 1, 2020, the Planning Department determined (Case Number 2020-0006251ENV) that the proposed additional Slow Streets project is statutorily exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15269 and categorically exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15301; and,

WHEREAS, The proposed action is the Approval Action as defined by the S.F. Administrative Code Chapter 31; and,

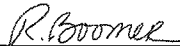
WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and is incorporated herein by reference; and,

RESOLVED, That the SFMTA Board approves the temporary traffic modifications listed above to restrict through-traffic, including designating additional corridors as Slow Streets to create more space for socially distanced walking and biking during the COVID-19 pandemic as referenced in the Proclamation of the Mayor Declaring the Existence of a Local Emergency dated February 25, 2020 (COVID-19 Emergency); and be it further

RESOLVED, That all actions approved herein, are to be in effect temporarily during the COVID-19 emergency referenced in the Proclamation of the Mayor Declaring the Existence of a Local Emergency dated February 25, 2020 and shall expire 120 days after the termination or expiration of such proclamation; and be it further

RESOLVED, That SFMTA staff shall report to the SFMTA Board of Directors prior to the 120 days after the conclusion of the COVID-19 Emergency, including evaluation findings and recommendations regarding the approved traffic modifications.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 21, 2020.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



San Francisco Planning

BOARD OF SUPERVISORS APPEAL FEE WAIVER FOR NEIGHBORHOOD ORGANIZATIONS

APPLICATION

Appellant's Information

Name: Mary Miles, Attorney at Law, for Coalition for Adequate Review

Address: 364 PAGE ST., #36
SAN FRANCISCO, CA 94102

Email Address: page364@earthlink.net

Telephone: (415) 863-2310

Neighborhood Group Organization Information

Name of Organization: Coalition for Adequate Review

Address: PLEASE SEE ABOVE

Email Address: PLEASE SEE ABOVE.

Telephone: " "

Property Information

Project Address: Citywide

Project Application (PRJ) Record No: 2020-006251 Building Permit No:

Date of Decision (if any): July 21, 2020

Required Criteria for Granting Waiver

All must be satisfied; please attach supporting materials.

REQUIRED CRITERIA	YES	NO
The appellant is a member of the stated neighborhood organization and is authorized to file the appeal on behalf of the organization. Authorization may take the form of a letter signed by the President or other officer of the organization.	<input checked="" type="checkbox"/>	
The appellant is appealing on behalf of an organization that is registered with the Planning Department and that appears on the Department's current list of neighborhood organizations.	<input checked="" type="checkbox"/>	
The appellant is appealing on behalf of an organization that has been in existence at least 24 months prior to the submittal of the fee waiver request. Existence may be established by evidence including that relating to the organization's activities at that time such as meeting minutes, resolutions, publications and rosters.	<input checked="" type="checkbox"/>	
The appellant is appealing on behalf of a neighborhood organization that is affected by the project and that is the subject of the appeal.	<input checked="" type="checkbox"/>	

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

Submission Checklist:

- APPELLANT AUTHORIZATION CURRENT ORGANIZATION REGISTRATION MINIMUM ORGANIZATION AGE
- PROJECT IMPACT ON ORGANIZATION

WAIVER APPROVED WAIVER DENIED

FROM:

Rob Anderson, Director
Coalition for Adequate Review

TO:

San Francisco Planning Department
1650 Mission Street
San Francisco, CA 94103

RE: Application for Board of Supervisors Appeal Fee Waiver
Appeal of Planning Department Exemption

DATE: August 20, 2020

This will advise that Mary Miles, Attorney at Law, is authorized to represent Coalition for Adequate Review in the appeal of the Planning Department's Exemption on the "Slow Streets Phase 3" Project.

Coalition for Adequate Review requests a fee waiver for filing this Appeal to the Board of Supervisors, and attaches a copy of the Application for Board of Supervisors Appeal Fee Waiver form.

Coalition for Adequate Review has existed for more than 24 months and is on the Planning Department's list of neighborhood organizations. Coalition for Adequate Review uses San Francisco streets, including the streets affected by the "Slow Streets Phase 3" Project and is affected by the impacts of the proposed Project that is the subject of this appeal.

Therefore, Coalition for Adequate Review respectfully asks that the Planning Department grant the attached Application for Board of Supervisors Appeal Fee Waiver. Thank you.

Rob Anderson