

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller  
Ed Reiskin, Executive Director, Municipal Transportation Agency  
Harlan Kelly, Jr., General Manager, Public Utilities Commission

FROM: Linda Wong, Assistant Clerk, Budget and Finance Sub-Committee  
Board of Supervisors

DATE: July 8, 2019

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Sub-Committee has received the following proposed legislation:

**File No. 190656**

**Ordinance delegating authority under Charter, Section 9.118(a), to the General Manager of the Public Utilities Commission to enter into one or more agreements to sell Low Carbon Fuel Standard Credits accrued by the Municipal Transportation Agency when revenue from such an agreement will be \$1,000,000 or more; and amending the Administrative Code to establish a Low Carbon Fuel Standard Credits Sales Fund to receive funds from the credits sales for use in connection with projects that will reduce San Francisco's carbon footprint and/or advance its sustainability goals.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [linda.wong@sfgov.org](mailto:linda.wong@sfgov.org).

c: Todd Rydstrom, Office of the Controller  
Kate Breen, Municipal Transportation Agency  
Janet Martinsen, Municipal Transportation Agency  
Joel Ramos, Municipal Transportation Agency  
John Scarpulla, Public Utilities Commission  
Christopher Whitmore, Public Utilities Commission

1 [Administrative Code - Establish Low Carbon Fuel Standard Credits Sales Fund - Authorizing  
2 Agreements to Sell Low Carbon Fuel Standard Credits - Public Utilities Commission]

3 **Ordinance delegating authority under Charter, Section 9.118(a), to the General Manager**  
4 **of the Public Utilities Commission to enter into one or more agreements to sell Low**  
5 **Carbon Fuel Standard Credits accrued by the Municipal Transportation Agency when**  
6 **revenue from such an agreement will be \$1,000,000 or more; and amending the**  
7 **Administrative Code to establish a Low Carbon Fuel Standard Credits Sales Fund to**  
8 **receive funds from the credits sales for use in connection with projects that will reduce**  
9 **San Francisco's carbon footprint and/or advance its sustainability goals.**

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

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

19 Section 1. Findings.

20 (a) In Assembly Bill 32, entitled the Global Warming Solutions Act of 2006, the  
21 Legislature required California to reduce its greenhouse gas emissions to 1990 levels by  
22 2020.

23 (b) In 2009, at the direction of then-Governor Schwarzenegger, the California Air  
24 Resources Board ("CARB") adopted Low Carbon Fuel Standard ("LCFS") regulations to  
25 partially implement Assembly Bill 32 ("LCFS Regulations"). Under the LCFS Regulations,

1 transportation providers that use fuels with a carbon intensity (or greenhouse gas emissions)  
2 lower than the State target generate LCFS credits that can be sold.

3 (c) The San Francisco Municipal Transportation Agency ("SFMTA") uses  
4 greenhouse gas-free electric energy provided by the San Francisco Public Utilities  
5 Commission ("SFPUC") to operate its electric public transit fleet, consisting of electric trolley  
6 buses, cable cars, light rail vehicles and, in the future, battery-powered electric buses.  
7 Because this fleet operates with a carbon intensity below the State target, the SFMTA  
8 accumulates credits that can be sold.

9 (d) The SFPUC estimates that the LCFS credits it has accumulated to date can be  
10 sold for more than \$10 million at current prices. The SFPUC further estimates that, in  
11 subsequent years, it could accumulate credits worth in excess of \$4 million per year at current  
12 prices.

13 (e) In October 2017, the SFPUC and the SFMTA entered into a Memorandum of  
14 Understanding ("MOU") setting forth the roles and responsibilities of the two agencies with  
15 respect to sales of the LCFS credits. Among other things, the agencies agreed that: (1) each  
16 agency would share equally the net revenues from the LCFS credits sales; and (2) both  
17 agencies would use the revenues generated from selling the LCFS credits to support general  
18 operations that reduce San Francisco's carbon footprint and/or advance the City's  
19 sustainability goals.

20 (f) In Resolution No. 17-0199, dated September 12, 2017, the SFPUC approved  
21 the MOU, authorized the SFPUC's Power Enterprise to sell the LCFS credits, delegated to the  
22 SFPUC's General Manager the authority to enter into agreements necessary to effectuate  
23 those sales, and authorized the SFPUC to seek Board of Supervisors approval of any sales  
24 under the LCFS program that would exceed \$1 million.  
25

1 (g) Pursuant to that authority, the SFPUC intends to sell the LCFS credits by issuing  
2 requests for offers to interested counterparties. Once the SFPUC accepts an offer from a  
3 counterparty, the SFPUC and the counterparty will enter into a Leadership for Energy  
4 Automated Processing ("LEAP") Master Agreement for Purchasing and Selling Low Carbon  
5 Fuel Standard Credits ("LEAP Master Agreement"). The LEAP Master Agreement will  
6 establish the necessary terms and conditions of the sale and the transfer of title to the LCFS  
7 credits from the SFMTA to the counterparty.

8  
9 Section 2. Delegation of Authority Under Charter Section 9.118(a).

10 (a) Under Section 9.118(a) of the Charter, the Board of Supervisors ("Board") must  
11 approve any contract entered into by a City department where the anticipated revenue from  
12 the contract is \$1 million or more.

13 (b) The Board authorizes the General Manager of the SFPUC to sell the SFMTA's  
14 existing LCFS credits and future LCFS credits, through one or more contracts, including  
15 contracts with revenues of \$1 million or more. The Board is approving the SFPUC's entering  
16 into such contracts at this time, even before the SFPUC has offered the LCFS credits for sale,  
17 because the Board understands that the SFPUC will need to expeditiously complete the sales  
18 to maximize the value of the credits. In addition, the Board is granting this authority with the  
19 understanding that there could be multiple sales in excess of the \$1 million threshold (each of  
20 which would require Board approval absent this delegation), and that each sale will be  
21 effectuated through use of the LEAP Master Agreement.

1 (c) The Board conditions its approval of LCFS credits sales of more than \$1 million  
2 on the General Manager of the SFPUC entering into contracts substantially in the form of the  
3 LEAP Master Agreement; provided, however, that the City Attorney and SFPUC General  
4 Manager may determine that certain non-material changes to that form agreement are  
5 necessary to effectuate the LCFS credits sales authorized herein and/or to adequately protect  
6 the City's interests.

7  
8 Section 3. Chapter 10, Article XIII, of the Administrative Code is hereby amended by  
9 adding Section 10.100-92, to read as follows:

10  
11 **SEC. 10.100-92. LOW CARBON FUEL STANDARD CREDITS SALES FUND.**

12 (a) Low Carbon Fuel Standard Credits Sales.

13 (1) The San Francisco Municipal Transportation Agency ("SFMTA") uses  
14 greenhouse gas-free electric energy provided by the San Francisco Public Utilities Commission  
15 ("SFPUC") to operate its electric public transit fleet, consisting of electric trolley buses, cable cars,  
16 light rail vehicles, and, in the future, battery-powered electric buses.

17 (2) In Assembly Bill 32, entitled the Global Warming Solutions Act of 2006, the  
18 Legislature required California to reduce its greenhouse gas emissions to 1990 levels by 2020. In  
19 2009, at the direction of then-Governor Schwarzenegger, the California Air Resources Board adopted  
20 Low Carbon Fuel Standard ("LCFS") regulations to partially implement Assembly Bill 32 ("LCFS  
21 Regulations"). Under the LCFS Regulations, transportation providers that use fuels with a carbon  
22 intensity (or greenhouse gas emissions) lower than the State target generate LCFS credits that can be  
23 sold.

1                   (3)     The SFMTA accumulates credits that can be sold to fuel producers, because the  
2 SFMTA operates its electric public transit fleet with a carbon intensity (or greenhouse gas emissions)  
3 below the State target. As of 2019, the SFPUC has agreed to take responsibility for the sales of those  
4 credits. It is possible that other agencies of the City and County of San Francisco might also  
5 accumulate LCFS credits and that the SFPUC might assume responsibility for the sales of those LCFS  
6 credits.

7                   (b)     Establishment of Fund. The Low Carbon Fuel Standard Credits Sales Fund is  
8 established as a category eight fund to receive, and account for the expenditure of, proceeds from the  
9 sale of Low Carbon Fuel Standard credits by the SFPUC.

10                  (c)     Use of Fund.

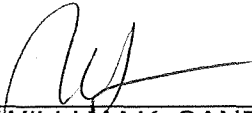
11                   (1)     Money in the Low Carbon Fuel Standard Credits Sales Fund shall be used first  
12 to reimburse the SFPUC and the SFMTA for any expenses they incur to sell Low Carbon Fuel Standard  
13 credits. After expenses, the SFPUC and the SFMTA will share equally in the net revenues from such  
14 sales. The SFPUC will use its share of the net revenues to support general operations that reduce the  
15 City and County of San Francisco's carbon footprint and/or advance its sustainability goals. The  
16 SFMTA intends to use its share to advance the SFMTA's sustainability and climate action initiatives  
17 and goals.

18                   (2)     In the event that any other City agencies accumulate LCFS credits, and that the  
19 SFPUC takes responsibility for the sale of those LCSF credits, funds from those sales may also be  
20 received in the Low Carbon Fuel Standard Credits Sales Fund for distribution by the SFPUC to those  
21 other City agencies. In that event, the SFPUC and those other agencies will determine how to share  
22 the proceeds.

1           (d) Administration of Fund. The SFPUC will administer the Low Carbon Fuel Standard  
2           Credits Sales Fund. The General Manager of the SFPUC shall submit an annual written report to the  
3           Board of Supervisors and the Controller describing expenditures made from the Low Carbon Fuel  
4           Standard Credits Sales Fund during the previous fiscal year.

5  
6           Section 4. Effective Date. This ordinance shall become effective 30 days after  
7           enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
8           ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
9           of Supervisors overrides the Mayor's veto of the ordinance.

10  
11          APPROVED AS TO FORM:  
12          DENNIS J. HERRERA, City Attorney

13  
14          By:   
15                WILLIAM K. SANDERS  
16                Deputy City Attorney

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18          n:\legana\as2019\1900494\01366001.docx

## LEGISLATIVE DIGEST

[Administrative Code - Establish Low Carbon Fuel Standard Credits Sales Fund - Authorizing Agreements to Sell Low Carbon Fuel Standard Credits - Public Utilities Commission]

**Ordinance delegating authority under Charter, Section 9.118(a), to the General Manager of the Public Utilities Commission to enter into one or more agreements to sell Low Carbon Fuel Standard Credits accrued by the Municipal Transportation Agency when revenue from such an agreement will be \$1,000,000 or more; and amending the Administrative Code to establish a Low Carbon Fuel Standard Credits Sales Fund to receive funds from the credits sales for use in connection with projects that will reduce San Francisco's carbon footprint and/or advance its sustainability goals.**

### Existing Law

Section 9.118(b) of the San Francisco Charter requires approval by the Board of Supervisors for agreements with a City and County of San Francisco ("City") department or agency when revenue from such agreements will be \$1 million or more.

### Amendments to Current Law

The proposed ordinance would amend the Administrative Code to establish the Low Carbon Fuel Standard Credits Sales Fund to receive the proceeds from any sales of Low Carbon Fuel Standard ("LCFS") credits by the San Francisco Public Utilities Commission ("SFPUC").

### Background Information

In Assembly Bill 32, entitled the Global Warming Solutions Act of 2006, the Legislature required California to reduce its greenhouse gas to 1990 levels by 2020.

In 2009, at the direction of then Governor Schwarzenegger, the California Air Resources Board ("CARB") adopted LCFS regulations to partially implement Assembly Bill 32 ("LCFS Regulations"). Under the LCFS Regulations, transportation providers that use fuels with a carbon intensity (or greenhouse gas emissions) lower than the target established by CARB generate LCFS credits that can be sold.

The San Francisco Municipal Transportation Agency ("SFMTA") uses greenhouse gas-free electric energy provided by the SFPUC to operate its electric public transit fleet (electric trolley buses, cable cars and light rail vehicles). Because this fleet operates with a carbon intensity below the State target, the SFMTA accumulates credits that can be sold.

The SFPUC estimates that the LCFS credits it has accumulated to date can be sold for more \$10 million at current prices. The SFPUC further estimates that, in subsequent years, it could accumulate credits worth in excess of \$4 million per year at current prices.



In October 2017, the SFPUC and the SFMTA entered into a Memorandum of Understanding (“MOU”) setting forth the roles and responsibilities of the two agencies with respect to sales of the LCFS credits. Among other things, the agencies agreed that they would: (i) share equally the net revenues from the LCFS credits sales; and (ii) use the revenues generated from selling the LCFS credits to support general operations that reduce San Francisco’s carbon footprint and/or advance the City’s sustainability goals.

In Resolution No. 17-0199 dated September 12, 2017, the SFPUC approved the MOU, authorized the SFPUC’s Power Enterprise to sell the LCFS credits, delegated to the SFPUC’s General Manager the authority to enter agreements necessary to effectuate those sales, and authorized the SFPUC to seek Board of Supervisors approval of any sales under the LCFS program that would exceed \$1 million.

The proposed ordinance would authorize the SFPUC to sell the SFMTA’s LCFS credits, through one or more contracts, including contracts with revenues of \$1 million or more.

The proposed ordinance would also amend the Administrative Code to establish the Low Carbon Fuel Standard Credits Sales Fund as a category eight fund to receive, and account for the expenditure of the proceeds, from the LCFS credits sales. The SFPUC will be responsible for administering the fund and distributing the net revenues in accordance with the MOU.

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