

BOARD of SUPERVISORS



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MEMORANDUM

Date: April 20, 2023
To: Planning Department
From: Brent Jalipa, Clerk of the Budget and Finance Committee
Subject: Board of Supervisors Legislation Referral - File No. 230349
Waiver of Municipal Code Requirements for Public Utilities Commission Agreements with Caltrans

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - Ordinance / Resolution
 - Ballot Measure

- Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
 - General Plan
 - Planning Code, Section 101.1
 - Planning Code, Section 302

- Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)

- General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

- Historic Preservation Commission
 - Landmark (*Planning Code, Section 1004.3*)
 - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
 - Mills Act Contract (*Government Code, Section 50280*)
 - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Brent Jalipa at Brent.Jalipa@sfgov.org.

1 [Waiver of Municipal Code Requirements for Public Utilities Commission Agreements with
2 Caltrans]

3 **Ordinance exempting from requirements of the Administrative Code and the**
4 **Environment Code two agreements between the San Francisco Public Utilities**
5 **Commission and the California Department of Transportation for professional services**
6 **for sewer improvement projects; and affirming the Planning Department's**
7 **determination under the California Environmental Quality Act.**

8
9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Environmental Findings.

11 The Planning Department has determined that the actions contemplated in this
12 ordinance comply with the California Environmental Quality Act (California Public Resources
13 Code Sections 21000 et seq.). The determination is on file with the Clerk of the Board of
14 Supervisors in File No. _____ and is incorporated by reference. The Board affirms the
15 determination.

16 Section 2. Background and Findings.

17 (a) The San Francisco Public Utilities Commission (SFPUC) is planning to construct
18 two projects to reduce the likelihood of future sewer and stormwater overflows from the
19 combined sewer system during the five-year, three-hour storm: the Lower Alemany Area
20 Stormwater Improvement Project and the Folsom Area Stormwater Improvement Project (the
21 Projects). On November 10, 2021, the San Francisco Bay Regional Water Quality Control
22 Board issued Stipulated Cleanup and Abatement Order No. R2-2021-0021 to the SFPUC
23 (approved by the Board of Supervisors on September 28, 2021, by Resolution No. 210899),
24 which requires, among other things, the SFPUC to implement the Projects.

1 (b) Because the Projects would construct new facilities within property designated as
2 part of the State Highway System, under the jurisdiction of the California Department of
3 Transportation (Caltrans), Caltrans is requiring the SFPUC to enter into two agreements – one
4 for each project (the Agreements), which provide for the SFPUC to pay for Caltrans to review
5 design and environmental review documents for the Projects. Caltrans does not allow
6 modifications to its form of agreement, including the addition of contract language normally
7 required by the San Francisco Municipal Code.

8 (d) On March 28, 2023, by Resolution No.23-0065, the San Francisco Public Utilities
9 Commission authorized the General Manager of the SFPUC to seek appropriate waivers of
10 Administrative Code and Environment Code requirements for the Agreements from the Board
11 of Supervisors. Resolution No.23-0065 is on file with the Clerk of the Board of Supervisors in
12 File No. 230349.

13 Section 3. Waiver of Administrative Code and Environment Code Requirements.

14 The Board of Supervisors hereby exempts the Agreements from all otherwise
15 applicable sections of the Administrative Code and Environment Code.

16 Section 4. Effective Date.

17 This ordinance shall become effective 30 days after enactment. Enactment occurs
18 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
19 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
20 Mayor's veto of the ordinance.

21 Section 5. Filing of Executed Agreement

22 Within 30 days of the Agreement being fully executed by all parties, the SFPUC shall
23 provide a copy of the Agreement to the Clerk of the Board of Supervisors for inclusion into the
24 file.
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1 APPROVED AS TO FORM:
2 DAVID CHIU, City Attorney

3 By: /s/
4 NICHOLAS T. NIRO
5 Deputy City Attorney

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LEGISLATIVE DIGEST

[Waiver of Municipal Code Requirements for Public Utility Commission Agreements With Caltrans]

Ordinance exempting from requirements of the Administrative Code and the Environment Code two agreements between the San Francisco Public Utilities Commission and the California Department of Transportation for professional services for sewer improvement projects; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Numerous provisions in the Administrative Code, including without limitation Chapter 6, establish the policies, procedures, and required contract terms that apply to public works contracts. The Environment Code also includes a number of policy provisions, such as Chapter 16 regarding "food service waste," that require certain clauses for public contracts.

Amendments to Current Law

The proposed ordinance would exempt two cooperative agreements between the San Francisco Public Utilities Commission (SFPUC) and the California Department of Transportation (Caltrans) from the San Francisco Administrative Code and the San Francisco Environment Code, both parts of the overall Municipal Code that governs San Francisco.

Background Information

The SFPUC is planning to construct two projects to reduce the likelihood of future sewer and stormwater overflows from the combined sewer system: the Lower Alemany Area Stormwater Improvement Project and the Folsom Area Stormwater Improvement Project (the Projects). The SFPUC must complete these projects to comply with the San Francisco Bay Regional Water Quality Control Board's Stipulated Cleanup and Abatement Order. Both projects necessitate use of Caltrans land because the sewer system is adjacent to state freeways.

Caltrans requires that public agencies enter into a cooperative agreement that provides for Caltrans review and approval of the project design, as a condition precedent to the use of Caltrans' land. Caltrans does not allow any revisions to the terms of its cooperative agreement. Therefore, the SFPUC cannot modify the cooperative agreement to conform with the Administrative Code and the Environment Code. The end result is that the City of San Francisco will be unable to complete the projects, and will then eventually be in violation of the Stipulated Cleanup and Abatement Order, if it cannot exempt the cooperative agreement from these code requirements.