

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee
FROM: Budget and Legislative Analyst 
SUBJECT: February 17, 2021 Budget and Finance Committee Meeting

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<p>Item 1 File 20-1415</p>	<p>Departments: Treasurer/Tax Collector</p>
<p>EXECUTIVE SUMMARY-</p>	
<p style="text-align: center;">Legislative Objectives</p> <p>File 20-1415: The proposed ordinance would waive certain license fees and business registration fees that are normally due on March 31, 2020 and June 1, 2020, respectively, for businesses operating in San Francisco. In response to COVID-19, the Mayor and Board of Supervisors have already delayed the deadline for these fee payments—to April 30, 2021 for business registration fees and November 1, 2021 for license fees.</p> <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The proposed fee waivers would apply to businesses in San Francisco that (1) generated more than 50 percent of their San Francisco gross receipts from business activities precluded by the Local Health Officer’s Shelter-In-Place orders in effect from March 17, 2020 through March 1, 2021, or a restaurant or other facility that prepares and serves food for delivery or carry out, and (2) generated a maximum of \$25 million in San Francisco gross receipts for calendar year 2019. For businesses that opened in calendar year 2020 or 2021, San Francisco gross receipts would be based on an estimate. The proposed ordinance also enables eligible businesses to seek a refund of their 2020 license and/or business registration fee within one year. • According to the Treasurer/Tax Collector, \$40.8 million was due in 2019 for business registration and license fees for businesses in San Francisco with gross receipts up to \$25 million: \$30.1 million in business registration fees from 92,589 businesses; and \$10.7 million from 7,000 businesses. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinance could result in a one-time revenue reduction in FY 2020-21, estimated to range from \$16 million to \$18 million. These estimates include the estimated \$2.9 million reduction in business registration and license fees in FY 2020-21, previously waived for restaurants with gross receipts up to \$750,000 and entertainment venues with gross receipts up to \$20 million. • Actual revenue reduction will differ from these estimates. Because the Treasurer/Tax Collector’s data does not identify the type of business, we based our estimates on U.S. Census County Business Patterns data, which differs from Treasurer/Tax Collector data in that it reports (a) payroll rather than gross receipts, and (b) a smaller number of businesses than registered in San Francisco. We also made assumptions about the number of impacted businesses contained in each of the U.S. Census data categories, which categorizes businesses by the North American Industry Classification System (NAICS)—a system that does not neatly align with the businesses that were impacted by Shelter-In-Place Orders <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that the Board of Supervisors shall act only by written ordinance or resolution.

BACKGROUND

In response to the coronavirus (COVID-19) global pandemic, the San Francisco Health Officer first issued a Shelter-In-Place Order—in conjunction with five other Bay Area counties—on March 16, 2020. As originally written, the Order required individuals to stay in their homes except for essential needs like grocery shopping, working in essential businesses, providing essential government functions, or engaging in essential travel. All non-essential businesses and activities were required to suspend operations; over time, the initial Shelter-In-Place Order has been modified to allow outdoor and certain other businesses and activities to resume, such as outdoor dining, curbside pick-up, and in-store retail, or—as has occurred more recently—to rollback reopening due to increasing Covid-19 cases. Consistent with the state’s four-stage roadmap for reopening, the County has a phased reopening plan that provides for the incremental reopening of business sectors and other activities in a manner that seeks to contain the risk of a surge in COVID-19 cases.

On March 11, 2020, the Mayor first announced several measures to support small impacted by COVID-19, including deferral of certain license fees otherwise due on March 31, 2020. Since March, the Mayor has deferred the payment of license fees several times, and fees originally due on March 31, 2020 and March 31, 2020 are now deferred to November 1, 2021, pursuant to legislation passed in January 2021 (File 20-1260). Business registration fees originally due on June 1, 2020 are deferred to April 30, 2021 (File 20-1260).

In addition to the fee deferrals, File 20-1260 waives business registration and license fees and payroll expense taxes for restaurants and food service businesses with annual San Francisco gross receipts up to \$750,000 and for entertainment venues with annual San Francisco gross receipts up to \$20 million. According to the Budget and Legislative Analyst’s report to the December 16, 2020 Budget and Finance Committee, more than 1,800 businesses would receive the waivers in FY 2019-20 through FY 2021-22, resulting in a reduction in revenues to the City of approximately \$5.0 million over a three-year period.

DETAILS OF PROPOSED LEGISLATION

File 20-1415: Ordinance

The proposed ordinance would waive certain license fees and business registration fees that are normally due on March 31, 2020 and June 1, 2020, respectively, for City businesses. In response to COVID-19, the Mayor and Board of Supervisors have already delayed the deadline for these payments—to April 30, 2021 for business registration fees and November 1, 2021 for license fees.

The proposed fee waivers would apply to San Francisco businesses that (1) generated more than 50 percent of their San Francisco gross receipts from business activities precluded by the Local

Health Officer's Shelter-In-Place orders in effect from March 17, 2020 through March 1, 2021, or a restaurant or other facility that prepares and serves food for delivery or carry out, and (2) generated a maximum of \$25 million in San Francisco gross receipts for calendar year 2019. For businesses that opened in calendar year 2020 or 2021, San Francisco gross receipts would be based on an estimate. The proposed ordinance also enables eligible businesses to seek a refund of their 2020 license and/or business registration fee within one year.

According to the Treasurer/Tax Collector, \$30,096,625 was due in 2019 business registration renewal fees from 92,589 San Francisco businesses with San Francisco gross receipts up to \$25 million, as displayed in Table 1 below. These businesses comprised about 62 percent of total business registration fees of \$48.9 million for all San Francisco businesses in 2019.

Table 1: FY 2019-20 Business Registration Renewal Fees Due to Treasurer/Tax Collector

Gross Receipts Tiers	Number of Businesses	Total Amount Due
\$0 to \$100,000	46,183	\$4,682,372
\$100,001-\$250,000	11,395	\$1,930,737
\$250,001-\$500,000	7,301	\$2,041,693
\$500,001-\$750,000	3,388	\$1,890,715
\$750,001-\$1,000,000	13,217	\$10,593,685
\$1,000,001-\$2,500,000	5,561	\$1,813,665
\$2,500,001-\$7,500,000	3,770	\$2,097,715
\$7,500,001-\$15,000,000	1,227	\$2,019,600
\$15,000,001-\$25,000,000	547	\$3,026,443
Total	92,589	\$30,096,625

Source: Treasurer/Tax Collector

According to information provided by the Treasurer/Tax Collector, a total of \$10,717,329 was due in 2019 license fees from a total of 7,000 San Francisco businesses with San Francisco gross receipts up to \$25 million (or 7.5 percent of 92,589 total businesses), as displayed in Table 2 below.

Table 2: FY 2019-20 License Fees Due to Treasurer/Tax Collector

Gross Receipts Tiers	Number of Businesses	Number of Licenses	Total Amount Due
\$0 to \$100,000	1,661	3,148	\$1,771,922
\$100,001-\$250,000	719	1,467	\$844,148
\$250,001-\$500,000	1,011	2,240	\$1,341,396
\$500,001-\$750,000	633	1,629	\$938,050
\$750,001-\$1,000,000	1,017	2,367	\$1,412,125
\$1,000,001-\$2,500,000	1,048	3,504	\$2,004,206
\$2,500,001-\$7,500,000	630	2,722	\$1,542,711
\$7,500,001-\$15,000,000	185	1,233	\$526,524
\$15,000,001-\$25,000,000	96	751	\$336,247
Total	7,000	19,061	\$10,717,329

Source: Treasurer/Tax Collector

A combined total of \$40,813,954 was due in license fees and business registration fees for businesses with San Francisco gross receipts up to \$25 million in 2019.

FISCAL IMPACT

The City will experience a one-time revenue reduction associated with the one-time waiving of license fees and business registration fees for San Francisco businesses that generated a maximum of \$25 million in San Francisco gross receipts in 2019 and that generated the majority of those receipts from business activities precluded by the Local Health Officer’s Shelter-In-Place orders, or a restaurant or other facility that prepares and serves food for delivery or carry out.

We estimated the number of San Francisco businesses likely to be impacted by both the license and business registration fee waivers by using 2018 industry information available from the U.S. Census Bureaus’ County Business Patterns data, which is an annual series that provides county-level economic data by industry including the number of establishments, employment during the week of March 12, first quarter payroll, and annual payroll. Based on this data, we estimate that the one-time revenue reduction would range from a total of \$16 to \$18 million. Specifically, we estimate that lost revenue associated with license fees could range from \$4.7 to \$5 million, which would impact revenues to multiple City departments. We estimate that the business registration fee waiver could lead to one-time revenue loss of \$11.3 to \$13.0 million, which would represent a loss to the City’s General Fund. These estimates include (rather than add to) the estimated revenue reduction in FY 2020-21of \$2.9 million from the waiver of certain license fees and business registration fees for entertainment venues with San Francisco gross receipts up to \$20 million and restaurants with San Francisco gross receipts up to \$750,000 (File No. 20-1260).

Table 3: Estimated Business Registration and License Fees for Eligible Businesses with Gross Receipts Less than \$25 Million

	Low	High
Business Registration Fees	\$11,340,000	\$13,000,000
License Fees	4,660,000	5,000,000
Total	\$16,000,000	\$18,000,000

Source: BLA Analysis of US Census County Business Patterns data

Actual revenue reduction will differ from these estimates, which are based on U.S. Census data rather than Treasurer/Tax Collector information. While the Treasurer/Tax Collector provided the amount of taxes due for all businesses with gross receipts up to \$25 million, this information did not identify the type of business, and therefore, could not be used to estimate the number of businesses impacted by the Shelter-In-Place Orders nor the number of food service businesses that would be covered by the proposed ordinance. These estimates are based on U.S. Census County Business Patterns data, which differs from Treasurer/Tax Collector data in that it reports (a) payroll rather than gross receipts, and (b) a smaller number of businesses than registered in San Francisco. Our estimates also made assumptions about the number of impacted businesses contained in each of the U.S. Census data categories, which categorizes businesses by the North

American Industry Classification System (NAICS)—a system that does not neatly align with the businesses that were impacted by Shelter-In-Place Orders.¹

POLICY CONSIDERATION

Impact of Ordinance on Fee and License Reporting and Collection

The Chief of Policy and Communications for the Treasurer/Tax Collector Office reported to us that implementation of the proposed ordinance would require collection of information related to whether a business received more than 50 percent of its total combined 2019 San Francisco gross receipts (up to \$25 million) from business activities that were either (1) precluded during all or a portion of the period from March 17, 2020 through March 1, 2021, or (2) from the activities of a facility that prepares and serves food for delivery or carry out or a restaurant.

The Treasurer/Tax Collector Chief of Policy and Communications noted that the information on whether a business generated more than 50 percent of their 2019 gross receipts—up to a maximum of \$25 million—from activities that were precluded by one or more of the Shelter-In-Place orders would likely be self-reported as part of the registration renewal tax filing, with the ability for the department to review and audit the self-reported information. The details of reporting and collecting this financial information would need to be addressed as part of implementing the proposed ordinance.

Business Operations during Shelter-in-Place

Some industries that were initially impacted by the broad Shelter-In-Place Order were later granted the ability to reopen with health and safety plans in place. Construction, warehousing, and manufacturing were all granted the ability to reopen in May 2020—while indoor gyms, fitness centers, and personal services were not granted the ability to reopen until three months later in September 2020 and were later required to close as a result of the most recent regional Stay-at-Home Order. The proposed ordinance is worded so that businesses in all of these industries could receive a waiver—regardless of the duration of their business closure and the amount of their 2020 gross receipts—as long as a majority of their 2019 gross receipts came from activities that were required to remain closed for some period of time due to Shelter-In-Place orders from March 17, 2020 through March 1, 2021.

RECOMMENDATION

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

¹ Another data limitation is the time lag for the U.S. Census data, which was compiled for 2018, and therefore does not account for the economic recession caused by the COVID-19 pandemic.

<p>Item 2 File 20-0947 <i>(Continued from September 30, 2020)</i></p>	<p>Department: Municipal Transportation Agency</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Administrative Code Chapters 6 (public works procurement), 14B, (Local Business Enterprise and non-discrimination), and Chapter 21 (procurement of commodities and services) for the Potrero Yard Modernization Project. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The SFMTA is proposing a Joint Development Services project to replace the bus storage and maintenance facility at Bryant and Mariposa Streets, and potentially construct housing. SFMTA would select a master developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including replacement the bus storage and maintenance facility and the residential and commercial development. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an agreement with SFMTA. • The proposed ordinance does not waive certain prevailing wage, First Source Hiring, Local Business Enterprise (LBE), and State Apprenticeship Program requirements. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services in one procurement, as required for joint development projects. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement, and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement. • Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

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

Potrero Yard Modernization Project

Potrero Yard, a 4.4-acre site located at Bryant Street and Mariposa Street, is a 100-year old facility that currently serves as a storage yard and trolley bus maintenance facility. SFMTA proposes to construct a modern maintenance facility to improve worker safety, enhance worksite efficiency, and align the worksite with City policy objectives related to environmental sustainability. According to SFMTA, the layout of the maintenance facility does not conform to current design standards that would optimize worksite efficiency, and the structural condition of the facility could impede restoration of Muni service after a major earthquake.

In addition to the construction of a modern storage and maintenance facility and to leverage the construction opportunity to address Citywide goals for housing production, the SFMTA plans to solicit proposals for the bus facility and joint development atop the bus facility as a mixed-use residential development with ground floor community-serving uses. The SFMTA estimates that the Potrero Yard Modernization Project could support the construction of between 525 and 575 new housing units. While no agreement is yet in place, the SFMTA has proposed an initial target of 50 percent of the housing units being affordable (or 262 to 288 units) to low- to moderate-income residents.

To pursue these objectives, SFMTA is asking the Board to approve the procurement framework that will allow the Agency to enter into Joint Development Services agreements with a private development team to design, build, finance, maintain, and perform asset management services for the proposed new Potrero Yard storage and maintenance facility.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Chapter 6 of the Administrative Code, which contains policies for the City's public works procurements, Chapter 14B of the Administrative Code, which contains policies for Local Business Enterprise and non-discrimination in the City's contracting processes, and Chapter 21 of the Administrative Code, which contains policies related to the City's contracting process for commodities and professional services, with the exception of the provisions below. The exemptions would only apply to SFMTA contracting related to Joint Development Services.

The proposed ordinance would not waive the following Administrative Code provisions:

- Prevailing Wages: All construction work related to any space of project development will be required to pay prevailing wages in accordance with the provision outlined in Section 6.22(e) of the Administrative Code.
- State Apprenticeship Program Requirements: All construction work related to any space of project development will be required to comply with state apprenticeship hiring requirements in accordance with the provision outlined in Section 6.22(n) of the Administrative Code.
- Local Hiring / First Source Policies: The legislation states that the SFMTA will require that all construction, asset management, or related work performed under any Development Agreement be in compliance with the City's Local Hiring Policy, per Chapter 82 of the Administrative Code, or the City's First Source Hiring Program, per Chapter 83 of the Administrative Code.
- Local Business Enterprise: The SFMTA would work with the Contract Monitoring Division to develop a Local Business Enterprise program for the project that is "consistent" with Chapter 14B of the Administrative Code and would require selection of the majority of LBEs after the Board of Supervisors approves the Project Agreement that would obligate the developer to build the Project.

Other Code Provisions

According to the City Attorney's Office, certain City contracting requirements as well as all State licensing requirements and various provisions of the Administrative Code related to the approval and ongoing monitoring and oversight of City contracts will continue to apply despite exemptions granted through the pending ordinance. Chapters 12B and 12C of the Administrative Code pertaining to non-discrimination in contracts will remain in effect and binding on the Potrero Yard procurement and contracting framework, and to all agreements executed through this procurement process. Chapter 25 of the Environmental Code outlining requirements for Public Works projects to meet clean construction requirements will remain in effect under the proposed ordinance. The Local Business Enterprises (LBE) certification process specified in Sections 14B 3(A)-(E) of the Administrative Code will continue to regulate the certification requirements for LBEs from whom services are procured under any agreement for Joint Development Services. Finally, the Potrero Yard agreements will remain subject to the provision of the City's Surveillance Technology Ordinance Administrative Code Section 19B.

Proposed Procurement Process

Selection and Exclusive Negotiating Agreement

According to the proposed ordinance, the SFMTA may pre-qualify and solicit proposals from private developers for Joint Development Services for the Project. In August 2020, the SFMTA issued a Request for Qualifications (RFQ) and received four responses in November 2020. The SFMTA selected three developers to participate in a Request for Proposals (RFP) in early 2021 to develop the Project:

- Potrero Mission Community Partners, led by John Laing Limited and Edgemoor Infrastructure & Real Estate LLC;
- Potrero Neighborhood Collective, led by Plenary Americas US Holdings Inc.; and
- Potrero Yard Community Partners, led by Fengate Asset Management and Emerald Fund, Inc.

SFMTA will select one developer to enter into the first Joint Development Services agreement, the Pre-Development Agreement, which will be used to negotiate the Project Agreement and the developer's Joint Development Services.

Joint Development Services

According to Section 1 (c) of the proposed ordinance, Joint Development Services could include procurement and management of contractors for pre-development, design-build contractors, and asset management contractors for joint housing and bus facility development. Section 3 (b) (5) states that the SFMTA may enter into one or more agreements with the selected developer for Joint Development Services, including pre-development, early works, design-build, asset management, lease-purchase, lease-leaseback, development, project, direct, and other agreements to deliver the project.

Compensation to Other Proposers

The proposed ordinance provides the SFMTA the option to compensate the two proposers who are not selected for exclusive negotiations for the Project for their work product on terms and conditions and in such an amount as determined by the Director of Transportation. Such compensation would be contingent upon their proposals' being responsive to the RFP and the SFMTA's having the right to own the work products included in the proposals. According to discussions with SFMTA staff, payment of stipends to unsuccessful shortlisted proposers (in this case, two of three proposers) is a standard practice for this type of project, where the RFP requires that the proposing teams invest considerable expense for an approximately five-month proposal preparation period.

California Environmental Quality Act (CEQA)

According to the SFMTA, the Planning Department is currently conducting a California Environmental Quality Act review of the proposed bus storage and maintenance facility and potential housing development. The Administrative Draft Environmental Impact Report is expected to be released in April 2021. According to the proposed ordinance, approval of the proposed ordinance does not constitute an approval of the project, and no project approval will occur until completion of CEQA review.

If the SFMTA and the selected developer successfully negotiate a Project Agreement that is approved by the Board of Supervisors, construction of the Potrero Yard Modernization Project is expected to occur in calendar years 2023 through 2026.

FISCAL IMPACT

The proposed ordinance states the development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025, the Agency’s 5-year program of projects. According to Jonathan Rewers, SFMTA Building Progress Program Manager, \$20.6 million of that amount is included in the Agency’s 2-Year Capital Budget for Fiscal Years 2021 and 2022, which is supported by appropriations. Given the early stages of project planning, final funding sources for the construction phase have not yet been identified.

Fiscal Feasibility

Because the proposed modernization of the Potrero Yard facility qualifies as a transit improvement project, the project is exempt from the finding of fiscal feasibility requirement under Chapter 29 of the Administrative Code. However, the proposed ordinance states that, if after further review the housing and commercial component of the project is not deemed to be financially feasible, as defined by the SFMTA, then the Agency would not proceed with that component of the project and would only proceed with the transit component.

POLICY CONSIDERATION

Development Approach

According to the proposed ordinance, the Federal Transit Administration (FTA) defines joint development projects as projects that involve: (1) integrated development of transit and non-transit improvements, with transit projects physically or functionally related to commercial, residential, or mixed-use development; (2) public and private investments that are coordinated between transit agencies and developers to improve land owned by a transit agency or related to a transit improvement; and (3) mutual benefit and shared cost among all parties involved. According to discussions with SFMTA staff, if the SFMTA and developer successfully negotiate a Project Agreement, the Project Agreement would require the developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including the bus storage and maintenance facility and the residential and commercial component. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an air-rights lease with the SFMTA, or an alternate agreement as negotiated by the parties. The form of agreement for the developer’s use of the housing and commercial development would specify the affordability requirements.

Administrative Code Waivers

As noted above, the proposed ordinance waives procurement and contracting requirements under Chapters 6, 14B, and 21 of the Administrative Code for the Potrero Yard Modernization Project, for which key provisions are summarized below. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services

in one procurement, as required for joint development projects. According to SFMTA staff, a Project Agreement will contain similar provisions to those being waived.

Competitive Procurement Procedures

Section 6.20 of the Administrative Code generally requires formal competitive procurement for public works contracts above \$706,000. Section 21.1 of the Administrative Code generally requires competitive solicitations for procurement of commodities and professional services. Both of these provisions would be waived under the proposed ordinance, with the ordinance proposing an alternate framework that provides for a best-value competitive solicitation.

Lowest Bid for Construction Contracts

Section 6.20 of the Administrative Code, which requires public works contracts valued above \$706,000 be awarded to those bids that demonstrate the ability meet all project specifications at lowest possible cost. Section 6.61 of the Administrative Code allows for “best-value” criteria to be used for design-build contracts, which are evaluated based upon responsibility and qualifications, stated subjective criteria, and project and/or financing costs. The proposed ordinance would authorize SFMTA to select the development team based on the overall best value to the City. Best value evaluation criteria include but are not limited to the qualifications of respondents, their projected construction and financing costs for the Project, life cycle cost savings to the City, design quality, and the extent to which the proposal or proposals meet the Project Objectives.

Not-to-Exceed Amounts

Section 21.19 of the Administrative Code requires professional service and commodities contracts contain a maximum not-to-exceed amount. The proposed ordinance waives this requirement. According to discussions with SFMTA staff, SFMTA intends to include a not-to-exceed amount in the Project Agreement, which is likely the final Joint Services Development agreement, and which would be subject to Board of Supervisors approval.

Board of Supervisors Approval and Reporting

False Claims. Section 6.80 of the Administrative Code requires written notification to the Board of Supervisors if a public works contractor submits false claims to the City. The proposed ordinance waives this Code section, Administrative Code Chapter 28.3 (which is not a subject of this ordinance) also includes submission of false information as grounds for disbarment of a contractor.

Collusion with City Officials. Section 6.81 of the Administrative Code allows the Board of Supervisors, on the recommendation of the Mayor, Department Head or the board or commission concerned, to nullify of a public works contract if contractors are found to have colluded with City officials. The proposed ordinance, as written, waives this requirement.

Labor Standards Enforcement and Prevailing Wage Requirements. Section 6.24 authorizes, subject to approval by the Mayor and Department of Administrative Services, the Office of Labor Standards Enforcement (OLSE) to develop and administer a plan to insure that all work contracted related to public works and public improvements will be conducted in manner

consistent with Section 6.22(e) of the Administrative Code. While this provision would be waived, the proposed ordinance states that all Project work would be required to comply with applicable certified payroll requirements, and that the OLSE would continue to enforce prevailing wage.

Public Works Contractor Performance. Section 6.26 of the Administrative Code requires public works contractors' performance be monitored and evaluated in a database maintained by the awarding Departments and report performance to the Board of Supervisors. According to discussions with SFMTA staff, the proposed ordinance waives this requirement because the master developer, and not SFMTA would have the contractual relationship with Project contractors, but would set up oversight and monitoring requirements in the Project Agreement.

LBE Reporting and Enforcement. Section 14B.15 requires the Contract Monitoring Division to provide quarterly reports, and relevant City Departments to provide annual reports, to the Board of Supervisors regarding progress towards meeting Local Business Enterprise and non-discrimination goals set forth in Chapter 14 of the Administrative Code. Section 14.B17 authorizes the Director of the Contract Monitoring Division to review and enforce the provisions of Chapter 14B as they related to LBE contract procurements. While the proposed ordinance waives this requirement, the proposed ordinance states that SFMTA shall work with the Contract Monitoring Division to develop an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure participation by LBEs and non-discrimination in the design, construction, and ongoing asset management of the Project.

Inspection of Records

Administrative Code Section 21.34 allows the City to audit books and records of professional service and commodities contractors. Both of these provisions would be waived under the proposed ordinance.

Summary

According to discussions with SFMTA staff, the intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement. Although the proposed ordinance states that the SFMTA will submit a term sheet for any proposed management or use agreements for the Project to the Board of Supervisors before requesting its final approval of those agreements pursuant to Charter Section 9.118, the Budget and Legislative Analyst recommends that the proposed ordinance be amended to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.

RECOMMENDATIONS

- Amend the proposed ordinance to state specifically that (1) the SFMTA will submit a term sheet to the Board of Supervisors for endorsement at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.
- Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.

Items 7 and 8 Files 21-0030 and 21-0031	Department: Department of Building Inspection
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <p>File 21-0030 is an ordinance amending the Building Code to waive certain fees for accessory dwelling unit projects on single family residence lots from January 1, 2021 through June 30, 2023. Under the proposed ordinance, the Department of Building Inspection would be required to annually report on the fee waivers.</p> <p>File 21-0031 is an ordinance appropriating \$165,000 from the General Reserve for FY 2020-21 to offset the revenue reduction of the proposed fee waiver.</p> <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • File 21-0030 waives building inspection fees, plan review fees, records retention fees, and site surcharge fees for the construction of accessory dwelling units on single family residence lots. Plumbing and electrical inspection fees are not included. These fee waivers would apply retroactively to January 1, 2021 through June 30, 2023. Accessory dwelling unit projects that paid fees after January 1, 2021 but before approval of the proposed ordinance, including projects that applied for permits prior to January 1, 2021 but did not receive a certificate of occupancy until after January 1, 2021, would be eligible for reimbursement. • The Board of Supervisors approved a one-year pilot waiving building inspection and other fees from June 2019 to May 2020 for accessory dwelling unit projects. File 21-0030 applies specifically to accessory dwelling units on single family residence lots, compared to the pilot program which was not specific to single family residence lots. According to the Department of Building Inspection, approximately 38 percent of the accessory dwelling unit applications under the pilot program were for single family residence lots. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed appropriation of \$165,000 from the General Reserve in FY 2020-21 would offset the reduction in fee revenue for an estimated 93 new accessory dwelling unit projects on single family residence lots in FY 2020-21 between January 2021 and June 2021. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The General Reserve balance is \$78.5 million, equal to 1.5 percent of General Fund revenue in FY 2020-21. The Administrative Code allows reducing the General Fund Reserve level in FY 2020-21 from 3 percent to 1.5 percent if funds are appropriated from the Rainy Day Reserve. The proposed Five-Year Financial Plan anticipates appropriating \$114.5 million from the Rainy Day Reserve in FY 2020-21. Administrative Code Section 10.60(b) requires appropriation of sufficient funds to the General Reserve to restore the fund balance to the level required by the Administrative Code. The Board of Supervisors may temporarily suspend the provisions of Section 10.60(b) by two-thirds vote for the current or upcoming budget year. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinances is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

Charter Section 2.105 states that the Board of Supervisors shall act by written ordinance or resolution.

BACKGROUND

The Board of Supervisors approved a one-year pilot program from June 2019 through May 2020, waiving building inspection (except plumbing and electrical), plan review, records retention, and site surcharge fees for accessory dwelling unit projects (Ordinance 207-19).

DETAILS OF PROPOSED LEGISLATION

File 21-0030 is an ordinance amending the Building Code to waive certain fees for accessory dwelling unit projects on single family residence lots from January 1, 2021 through June 30, 2023. Under the proposed ordinance, the Department of Building Inspection would be required to annually report on the fee waivers. The proposed ordinance would affirm the Planning Department's determination that the proposed fee waiver complies with the California Environmental Quality Act (CEQA).

File 21-0031 is an ordinance appropriating \$165,000 from the General Reserve for FY 2020-21 to offset the revenue reduction of the proposed fee waiver.

Building Permit Fee Waiver (File 21-0030)

The proposed ordinance applies to the construction of accessory dwelling units (ADUs) on lots containing single family residences. The ordinance waives building inspection fees, plan review fees, records retention fees, and site surcharge fees. Building inspection fees for plumbing and electrical work are not included. These fee waivers would apply retroactively to January 1, 2021 through June 30, 2023. Accessory dwelling unit projects that paid fees after January 1, 2021 but before approval of the proposed ordinance, including projects that applied for permits prior to January 1, 2021 but did not receive a certificate of occupancy until after January 1, 2021, would be eligible for reimbursement.

Department of Building Inspection Reports

The proposed ordinance requires reports to the Board of Supervisors and the Building Inspection Commission on the fee waiver program on March 1, 2022 for calendar year (CY) 2021, and on March 1, 2023 for CY 2022. These reports are to include the number of projects, including type and location, and total amount of fees waived or projected to be waived. The report is also to include characteristics of the accessory dwelling unit project, including (a) length of time the applicant has owned the property, (b) whether the applicant is an individual or a business, (c) whether the accessory dwelling unit will be a rental and the intended amount of the rent, (d) whether the applicant has submitted building permit applications for other residential properties; and (e) whether that applicant owns other residential properties in the City.

FISCAL IMPACT

Impact of the FY 2019-20 One-Year Fee Waiver

The Board of Supervisors approved a one-year waiver from June 2019 to May 2020 for plan review, building inspection, records retention, and site surcharge fees for accessory dwelling units (Ordinance 207-19). Ordinance 207-19 was enacted in October 2019 but was retroactive to June 2019. According to a May 2020 memorandum from the Department of Building Inspection, 489 accessory dwelling unit applications were submitted between June 2019 and May 2020, of which 259 applications were submitted prior to and 230 applications were submitted after the ordinance enactment date on October 13, 2019. The reduction in fee revenue to the Department of Building Inspection during the one-year fee waiver was \$861,967.

Potential Impact of the Proposed Ordinances

The proposed ordinance applies to accessory dwelling units on single family residence lots, compared to the pilot program from June 2019 to May 2020, which was not specific to single family residence lots. According to the Department of Building Inspection memorandum, approximately 38 percent of the accessory dwelling unit applications (87 of 230 applications) between October 2019 (the implementation date of Ordinance 207-19) and May 2020 were for single family residence lots.

The proposed appropriation of \$165,000 from the General Reserve in FY 2020-21 would offset the reduction in fee revenue for an estimated 93 new accessory dwelling unit projects on single family residence lots between January 2021 and June 2021.¹

General Reserve

The current balance of the General Reserve is \$78.5 million, equal to 1.5 percent of General Fund revenue in FY 2020-21, according to the proposed Five-Year Financial Plan for FY 2021-22 through FY 2025-26. This General Reserve funding level is consistent with the Administrative Code, which allows a reduction in the General Fund Reserve in FY 2020-21 from 3 percent to 1.5 percent of General Fund revenues if funds are appropriated from the Rainy Day Reserve. The proposed Five-Year Financial Plan assumes the maximum appropriation of \$114.5 million from the Rainy Day Reserve in FY 2020-21.

Administrative Code Section 10.60(b) requires appropriation of sufficient funds to the General Reserve to restore the fund balance to the level required by the Administrative Code. The Board of Supervisors may temporarily suspend the provisions of Section 10.60(b) by two-thirds vote for the current or upcoming budget year. According to the Administrative Code, the Board of Supervisors may suspend Section 10.60(b) provisions following a natural disaster that causes the Mayor or the Governor to declare a state of emergency, or for any other purpose.

RECOMMENDATION

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

¹ The average fee waiver during the pilot program from June 2019 to May 2020 was \$1,762, based on approximately \$862,000 in waived fees for 489 units.