

1 [Administrative Code Waivers - SFMTA Potrero Yard Modernization Project - Project Delivery
2 Procedure]

3 ~~Ordinance waiving certain procurement and contracting requirements in Chapters 6,~~
4 ~~14B, and 21 of the Administrative Code, as applied to the Potrero Yard Modernization~~
5 ~~Project, to authorize~~ing the San Francisco Municipal Transportation Agency to:
6 procure exempt certain design, construction, finance, maintenance, asset
7 management, and ~~other services (Joint Development Services) for the Project utilizing~~
8 ~~a joint development delivery method; select a developer team utilizing a best-value~~
9 ~~selection process; and, provided that the City elects to proceed with the Project after~~
10 ~~completing its review under the California Environmental Quality Act, exempt~~
11 ~~agreements for Joint Development Services from certain contracting requirements in~~
12 related agreements for the development of the Potrero Yard Modernization Project,
13 located at 2500 Mariposa Street, from Chapters 6, 14B, and 21 of the Administrative
14 Code, but requiring the payment of prevailing wages, implementation of a local
15 business enterprise utilization program, and compliance with the City's local hire
16 policy and first source hiring Ordinance, as applicable to such agreements, and
17 permitting a best-value selection of the developer team if the City elects to proceed
18 with the Project after completing its review under the California Environmental Quality
19 Act.

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21 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
22 **Additions to Codes** are in *single-underline italics Times New Roman font*.
23 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
24 **Board amendment additions** are in double-underlined Arial font.
25 **Board amendment deletions** are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. General Background.

4 (a) Under its Building Progress Program, the San Francisco Municipal
5 Transportation Agency (“SFMTA”) is undertaking conceptual plans and studies to renovate
6 and/or replace a number of its outdated facilities to support and improve transit operations
7 and pursue complementary joint development opportunities. One of the program’s first
8 potential projects is the Potrero Yard Modernization Project (“Project”), located at
9 2500 Mariposa Street in the Mission District and for which the SFMTA is exploring the joint
10 development of private housing and commercial components. The Project would advance the
11 goals of the Public Lands for Housing program, the citywide response to Mayor Ed Lee’s 2014
12 State of the City address directing City agencies to examine their underutilized sites with
13 regard to their potential for housing.

14 (b) The SFMTA is studying and developing the Project, which could replace the
15 Potrero Yard’s obsolete two-story maintenance building and bus yard with a modern and more
16 efficient bus maintenance and storage facility (“Bus Facility”). The SFMTA would use the Bus
17 Facility to maintain and store its expanding fleet of electric buses, improve working conditions
18 for employees, ensure resiliency in the face of climate change and natural disasters, and
19 improve transit service by helping to reduce vehicle breakdowns, increase on-time
20 performance, and reduce passenger overcrowding.

21 (c) The SFMTA has been working with other City agencies, including the Planning
22 Department, the Mayor’s Office of Housing and Community Development, and the Office of
23 Economic and Workforce Development, to study the development and integration of private
24 housing and other complementary uses with the Bus Facility as part of the Project. Based on
25 internal analyses and a public outreach program, the SFMTA anticipates that housing is a

1 feasible and compatible use at the site and expects that housing would be a component of the
2 Project. The SFMTA estimates the Project could accommodate a range of 525 to 575
3 residential units, with an affordability target of at least 50%. The SFMTA will encourage the
4 Project to seek additional funds to maximize the affordability percentage, even up to 100%.

5 (d) Based on an initial technical feasibility study for the Project, the SFMTA
6 estimates the cost to construct the Project would be approximately \$500 million
7 (in 2019 dollars and exclusive of costs not directly related to construction, such as
8 architectural, engineering, financing, administrative, and permitting costs). The SFMTA has
9 determined, and the Board of Supervisors concurs, that the Project would be “a public
10 transportation capital improvement project under the jurisdiction of the San Francisco
11 Municipal Transportation Agency that will support an increase or improvement in Municipal
12 Railway (“Muni”) service” under Administrative Code Section 29.1(c)(5), and thus, under that
13 Section and Section 29.1(b), is not subject to a fiscal feasibility finding under Administrative
14 Code Chapter 29. Notwithstanding these exemptions, the SFMTA would proceed with the
15 Project only if it is determined through further study and development that the Project is
16 fiscally feasible.

17 (e) The SFMTA is undertaking environmental review under the California
18 Environmental Quality Act, California Public Resources Code Sections 21000 et seq., and the
19 CEQA Guidelines and San Francisco Administrative Code Chapter 31 (collectively, “CEQA”)
20 with the Planning Department. If, following completion of this CEQA review, the Project is
21 approved, the SFMTA anticipates construction of the Project to commence in 2023 and be
22 completed by 2026, a period which may be preceded by certain early works construction
23 activities that relate directly to and ensure the timely start of the Project, and support transit
24 operations during that time period. If the Project goes forward, the cost of early works
25 activities will not exceed 25% of the cost to construct the Bus Facility and private residential

1 component. The SFMTA is working with the Department of Public Works to assist with
2 procurement and delivery of the Project.

3 (f) The Project would not involve the disposal of surplus property under California
4 Government Code Sections 54220 et seq., because the site would be needed for the
5 SFMTA's transportation use and the City's housing use.

6 Section 2. Findings Supporting Joint Development of the Potrero Yard Modernization
7 Project.

8 (a) According to the Federal Transit Administration, joint development projects
9 involve: (1) integrated development of transit and non-transit improvements, with transit
10 projects physically or functionally related to commercial, residential, or mixed-use
11 development; (2) public and private investments that are coordinated between transit
12 agencies and developers to improve land owned by a transit agency or related to a transit
13 improvement; and (3) mutual benefit and shared cost among all parties involved. According
14 to the Office of Economic and Workforce Development, the City can create critical public
15 benefits without diverting scarce resources from basic civic needs by using joint development
16 projects. Working with private entities would allow the City to expand the public benefit with
17 private investments.

18 (b) To date, the SFMTA's objectives for the Project ("Project Objectives") have been
19 identified as follows: (1) select a private entity developer early in the CEQA process to provide
20 input and develop a functional and attractive design that reflects input from the community;
21 (2) complete construction by the end of 2026; (3) transfer all or portions of the Project's
22 design, construction, financing, maintenance, and real estate risks to a private entity, giving
23 the SFMTA budget and schedule certainty and making joint development financially feasible
24 while operating the Bus Facility safely, efficiently, and reliably in a manner compatible with the
25 Project's joint development components; (4) realize savings from the Project's joint

1 development components to support the Bus Facility to the extent it is financially feasible; and
2 (5) make payments to the private entity only when the Project is substantially complete. As
3 the Project is further studied, these Project Objectives may evolve.

4 (c) Unlike conventional methods of contracting for new construction, in which a
5 public entity procures discrete functions through separate solicitations, joint development
6 projects use a single private entity that has the full responsibility and financial liability for
7 performing a significant number of services under a long-term contractual arrangement with
8 the public entity. These services could include pre-development, design, construction,
9 financing, operations, or asset management services (collectively or in any combination, “Joint
10 Development Services”). Some examples of Joint Development Services specific to the
11 Project include, but are not limited to, the competitive (e.g., low-bid or best-value)
12 procurement and management of early works contractors for preliminary construction
13 activities directly related to and needed for the Project, design-build contractors for the entire
14 Project, and asset management contractors for the joint development components and the
15 building infrastructure they share with the Bus Facility. Under a joint development project, the
16 private sector partner may make a substantial cash, at-risk, equity investment in the project if
17 the financing structure and final risk allocation calls for it, and the public sector gains access
18 to new revenue and/or service delivery capacity without having to pay the private-sector
19 partner upfront.

20 (d) Based on the Project Objectives, the SFMTA has determined it is appropriate
21 and in the City’s best interest at this time to pursue joint development to study, develop, and
22 deliver the Project on time and within budget.

23 Section 3. Joint Development Procurement Process; Exemption from Certain
24 Administrative Code Provisions.

1 (a) Administrative Code Chapter 6 codifies the City's policies and procedures for
2 public works contracts, including design, engineering, and construction contracts;
3 Administrative Code Chapter 21 regulates the City's acquisition of commodities and
4 professional services, including finance, as well as maintenance, asset management, and
5 other general services; and Administrative Code Chapter 14B codifies the City's policies and
6 requirements for utilization of Local Business Enterprises (LBEs) on and non-discrimination in
7 public contracts generally. The Joint Development Services required for the Project will likely
8 span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate
9 the acquisition of these services in one procurement, as required for joint development
10 projects.

11 (b) Notwithstanding any provision of the Administrative Code, the SFMTA is
12 authorized to procure and contract for Joint Development Services utilizing the joint
13 development delivery method described below:

14 (1) The SFMTA may pre-qualify, solicit proposals from, and enter into one or
15 more agreements with a private entity for Joint Development Services for the Project.

16 (2) The SFMTA may use a request for qualifications process to prequalify
17 and shortlist the private entities allowed to submit proposals to provide Joint Development
18 Services for the Project. The request for qualifications shall generally describe the Project,
19 the Project Objectives, the desired qualifications, experience, and responsibilities of the
20 selected party, and the overall procurement process, delivery method, and schedule for the
21 Project.

22 (3) The SFMTA may issue to shortlisted parties a request for proposals. The
23 request for proposals may state a fixed budget for the Project, and describe the Project, the
24 Project Objectives, the range of Joint Development Services and delivery methods the
25 SFMTA is considering for the Project, and the proposal submittal requirements and evaluation

1 criteria. The proposal evaluation criteria may include, but are not limited to, the qualifications
2 of respondents, their projected construction and financing costs for the Project, life-cycle cost
3 savings to the City, design quality, and the extent to which the proposal or proposals meet the
4 Project Objectives. The request for proposals may also include the form of agreement or
5 basic term sheet for one or more of the Joint Development Services agreements, and any
6 other information the SFMTA deems necessary to adequately describe the Project,
7 development opportunity, procurement process, delivery method, and Joint Development
8 Services needed to deliver the Project.

9 (4) Based on the evaluation of proposals received, the SFMTA may select
10 one respondent with the proposal the SFMTA determines provides the overall best value to
11 the City and negotiate with that respondent the terms of any Joint Development Services
12 agreement. The best-value determination shall be based on proposal evaluation criteria
13 included in the request for proposals. In making the best-value determination, the SFMTA
14 retains the right to hold and enter into negotiations with the selected respondent.

15 (5) The SFMTA may enter into one or more agreements for Joint
16 Development Services with the selected respondent and any agreements ancillary thereto.
17 The forms of agreements may include pre-development, early works, design-build, asset
18 management, lease-purchase, lease-leaseback, development, project, direct, and other
19 appropriate agreements to deliver the Project.

20 (6) The SFMTA may offer a reasonable payment for work product on terms
21 and conditions and in such amount as determined by the Director of Transportation to short-
22 listed respondents who are not selected for exclusive negotiations for Joint Development
23 Services. The receipt of a payment by such a respondent shall be contingent upon their
24 proposal being responsive to the request for proposals and the SFMTA having the right to
25 own work product included in the proposal.

1 (c) Except as provided below, any Joint Development Services agreement awarded
2 in connection with the Project shall be exempt from the ~~procurement and contracting~~
3 requirements of Administrative Code Chapters 6, 14B, and 21.

4 (1) The SFMTA shall require that all construction, asset management, and
5 other covered work or improvement performed under any Joint Development Services
6 agreement pay prevailing wages in accordance with Section 6.22(e) of Article II of Chapter 6
7 of the Administrative Code, comply with applicable certified payroll requirements under those
8 provisions of the Administrative Code by submitting certified payroll through the City's certified
9 payroll reporting system, and comply with the requirements of the State Apprenticeship
10 Program in accordance with Section 6.22(n) of Article II of Chapter 6. The Office of Labor
11 Standards Enforcement shall have authority to enforce such prevailing wage requirements.

12 (2) The SFMTA shall require that all construction, asset management, and
13 other covered work or improvement performed under any Joint Development Services
14 agreement comply with the City's Local Hiring Policy as set forth in Administrative Code
15 Chapter 82 or the City's First Source Hiring Program as set forth in Administrative Code
16 Chapter 83, as applicable.

17 (3) The SFMTA shall work with the Contract Monitoring Division to develop
18 an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure
19 participation by LBEs and non-discrimination in the design, construction, and ongoing asset
20 management of the Project.

21 (4) At all stages of the Project's procurement process, the SFMTA must
22 obtain applicable approvals from the SFMTA Board of Directors or Board of Supervisors as
23 required under the San Francisco Charter or Municipal Code. If the SFMTA intends to
24 contract for a Joint Development Services agreement with a cost that could exceed
25 \$10 million or a term beyond ten years, the SFMTA will at the appropriate time request that

1 the Board of Supervisors approve the corresponding agreement or agreements pursuant to
2 Charter Section 9.118. ~~The SFMTA will also submit for review a term sheet for any proposed~~
3 ~~management or use agreements for the Project to the Board of Supervisors before requesting~~
4 ~~its final approval of these agreements pursuant to Charter Section 9.118.~~

5 (d) The provisions of this ordinance shall be implemented in a manner consistent
6 with the civil service provisions of the Charter.

7 (e) In any agreement for Joint Development Services which involves the use of any
8 funds furnished, given, or loaned by the government of the United States or the State of
9 California, all laws, rules, and regulations of the government of the United States or the State
10 of California or of any of their agencies, relative to the performance of the services under the
11 agreement and the conditions under which the services are to be performed, shall prevail over
12 the requirements of this ordinance when such laws, rules, or regulations are in conflict with or
13 otherwise preempt the requirements of this ordinance.

14 Section 4. Environmental Review.

15 The SFMTA is undertaking CEQA review of the Project with the Planning Department.
16 This ordinance shall not be construed as an approval of the Project. Rather, this ordinance
17 simply puts in place a procedure to continue to develop, study, and design the Project, and, if
18 the Project is approved following environmental review, to implement and deliver the Project.
19 No approval of the Project will occur until CEQA review is completed, and until the City
20 decision-makers review and consider the information contained in the CEQA document, and
21 all other relevant information about the Project. The Project will continue to develop as further
22 studies are conducted, and the City retains absolute discretion to (a) require modifications to
23 the proposed Project and/or implementation of specific measures to mitigate significant
24 adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse
25 environmental impacts of the proposed Project, including the “no project” alternative; (c) reject

1 all or part of the proposed Project if the economic and social benefits of the proposed Project
2 do not outweigh otherwise unavoidable significant adverse environmental impacts of the
3 Project; (d) approve the proposed Project upon a finding that the economic and social benefits
4 of the proposed Project outweigh otherwise unavoidable significant adverse environmental
5 impact of the proposed Project; and (e) deny the proposed Project.

6 Section 5. Effective Date.

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

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13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: /s/ _____
16 Isidro Alarcon Jiménez
17 Deputy City Attorney

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