

1 [Lease Amendment – Coit Tower, LLC – Lease and Operation of Coit Tower]

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3 **Ordinance approving the amendment to the lease with Coit Tower, LLC for the**
4 **operation of Coit Tower to allow a service charge for online elevator ticket sales in**
5 **addition to the general fees for elevator tickets provided in Park Code Section 12.06,**
6 **allow the sale of food and beverage from a kiosk exterior to Coit Tower on a part of a**
7 **vacated street or other space designated by the Recreation and Park Department**
8 **General Manager if the street is not vacated, provide an ongoing rent credit of up to**
9 **\$9,500 per month for increased mural protection staffing, provide a short term rent**
10 **credit of up to \$7,000 per month on account of delay in identifying a food service**
11 **premises, allow a retroactive and ongoing credit for credit card fees associated with**
12 **elevator tickets purchased by visitors, and amend the lease in certain other respects;**
13 **affirming the Planning Department’s determination under the California Environmental**
14 **Quality Act; and making findings of consistency with the General Plan and the eight**
15 **priority policies of Planning Code Section 101.1.**

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

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

24 Section 1.

25 (a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. 151210 and is incorporated herein by reference. The Board affirms
3 this determination.

4 (b) On October 27, 2015, the Planning Department determined that the actions
5 contemplated in this ordinance are consistent, on balance, with the City's General Plan and
6 eight priority policies of Planning Code Section 101.1. The Board adopts this determination
7 as its own. A copy of said determination is on file with the Clerk of the Board of Supervisors in
8 File No. 151210, and is incorporated herein by reference.

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10 Section 2. Approval of Lease Amendment for Coit Tower.

11 (a) Findings.

12 (1) The City and County of San Francisco (City) owns, and the Recreation and
13 Park Department (Department) operates and maintains, the land and improvements
14 commonly known as Coit Tower. In 1934, a group of artists supported by the Public Works of
15 Art Project, a forerunner of the Works Progress Administration, painted a series of murals
16 portraying daily life in California during the Great Depression. The murals constitute the most
17 important asset of the building and are maintained and managed by the San Francisco Arts
18 Commission. The Department works closely with the Arts Commission to best understand and
19 implement the proper protocols that need to be adhered to in order to best protect the murals
20 in accordance with the mural protection guidelines developed for the Department by the Arts
21 Commission.

22 (2) The City and Coit Tower, LLC (Tenant) entered into a lease, dated
23 February 1, 2014 (the "Lease"), for the lease and management of the elevator and bookstore
24 operations at Coit Tower. The Lease requires Tenant to implement a docent program under
25 which a docent would be on duty during all hours Coit Tower is open to the public to greet

1 visitors, educate guests about the murals, inform guests about rules governing mural viewing,
2 and observe visitors in the lobby and remind them of the viewing rules (backpacks and other
3 items to be carried in front, no food or drink, no touching, etc.), and the Lease provides a
4 credit against the monthly rent in the amount of \$3,333.33, adjusted annually by CPI, for each
5 full calendar month in which Coit Tower, LLC, provides the required docent service.

6 (3) The Lease provides anticipated revenue to the City of more than one million
7 dollars and therefore, the Lease and its modification requires Board of Supervisors approval
8 pursuant to San Francisco Charter, Article IX, Section 9.118, subsection (c). The Board of
9 Supervisors approved the Lease by Board of Supervisors Resolution No. 42-14.

10 (4) The Lease also requires Tenant to protect the murals in Coit Tower. Tenant,
11 in consultation with the Department, has determined that the appropriate level of staffing for
12 mural protection is greater than the levels originally contemplated by the Lease. Additional
13 staff is required to adequately monitor lines and visitor flow, remind visitors of the mural
14 guidelines, and provide visitor engagement and visitor education regarding the murals and
15 their history. Since the actual staffing demands are much higher than anticipated by the
16 Department or Tenant when the Lease was negotiated, Tenant did not budget for the
17 additional staffing at the time the parties entered into the Lease. The Department is proposing
18 to amend the Lease to offer Tenant a mural protection staffing credit in the amount of \$9,500
19 per month to offset the financial burden on the Tenant of the additional staff needed to provide
20 enhanced mural protection. This amount reflects Tenant's cost per month of between 2.5 and
21 4 FTE of additional staff, depending on the day and season. The Department shall evaluate
22 the effectiveness of the enhanced mural staffing and make a report to the Board of
23 Supervisors by January 31, 2017. Any future increases to the enhanced mural staffing credit
24 shall be approved by the Board of Supervisors. ~~The amount of the credit may be adjusted by~~
25 ~~the General Manager of the Department if, as a result of a future significant increase in~~

1 ~~visitorship or docent tours of the murals, the Tenant reasonably determines that it must~~
2 ~~provide additional staffing beyond the staffing currently contemplated for mural protection.~~

3 (5) Section 7.2(i) of the Lease provides that Department staff will explore the
4 demand and desire for food and beverage service at or adjacent to Coit Tower. The
5 Department has concluded its review, and has identified an area near Coit Tower as a
6 desirable location for a kiosk for light food and beverage service. The location is presently part
7 of Greenwich Street. The Department proposes amending the Lease to add such location to
8 the premises if City elects in the future to vacate for public street purposes that portion of
9 Greenwich Street comprising the proposed additional premises, and to allow food and
10 beverage operations from such location. Any such vacation will be made, if at all, at the sole
11 discretion of City's Board of Supervisors following completion of the requisite environmental
12 review process and only if the Board of Supervisors in its sole discretion makes the findings
13 required for summary vacation required by the California Street and Highways Code and in
14 accordance with the provisions of San Francisco Public Works Code Section 787 and such
15 rules and conditions adopted by the Board of Supervisors (the "Vacation Action"). The
16 Department further proposes that if the Board of Supervisors does not take the Vacation
17 Action, then Department staff and Tenant will continue to explore possible locations for food
18 and beverage service in the vicinity, and that the Lease be amended to provide that the
19 General Manager of the Department may elect to substitute other space as the location of the
20 food and beverage service kiosk. The General Manager would not designate any substitute
21 space unless and until any required environmental review of the proposed substitute space
22 has been conducted in compliance with the California Environmental Quality Act.

23 (6) To account for the adverse impact on Tenant's business operations resulting from
24 the delay in confirming the desire for food and beverage service and identifying a location on
25 which such service can be provided, the Department proposes to provide a partial rent credit

1 in the amount \$5,000 per month for the period commencing retroactively on December 1,
2 2014 and ending on the date immediately preceding the effective date of the Lease
3 amendment and in the amount of \$7,000 per month for the period commencing on the
4 effective date of the Lease amendment and ending on the earlier of July 31, ~~2016~~2017, 60
5 days after the additional premises are added to the Lease, or the first day of Tenant's sales
6 from the proposed additional premises.

7 (7) Under the terms of the Lease, Tenant pays percentage rent at the rate of
8 90% on the gross receipts from elevator ticket sales. Tenant must pay certain credit card fees
9 associated with elevator tickets purchased by visitors with credit cards. The definition of gross
10 receipts does not exclude credit card fees, so the Tenant is currently required to absorb all of
11 the credit card fees in Tenant's remaining 10% of elevator ticket gross receipts (rather than
12 the fees being proportionately allocated between the Department and the Tenant). The
13 Department proposes to amend the Lease definition of gross receipts to exclude the fees paid
14 by Tenant to the issuers of credit cards to the extent attributable to the sale of elevator tickets
15 and to provide a credit against rent payable under the Lease in the amount of the credit card
16 fees paid by Tenant attributable to elevator ticket sales, commencing retroactively as of July
17 1, 2014.

18 (8) In addition to percentage rent based on elevator ticket sales, under the
19 terms of the Lease, Tenant must pay a percentage of rent on gross receipts for merchandise
20 sales, audio tours and binocular rentals, telescopic viewers, student or docent led tours, and
21 admission receipts. The Department proposes to amend the Lease to require the Tenant to
22 pay percentage rent at the rate of 10% on gross receipts from the sale of food and beverages.

23 (89) San Francisco Park Code Section 12.06 sets forth the fee to be charged
24 for admission to the Coit Tower elevator. The Park Code does not provide for an additional
25 convenience fee or service charge for elevator tickets purchased online. Guests to Coit Tower

1 do not have the ability to purchase a ticket online for the elevator or to reserve a specific time.
2 The Department has determined that authorizing Tenant to pre-sell elevator tickets and
3 possibly to sell timed tickets will help to control guest flow and encourage sales during the off
4 peak hours. The costs associated with such a service were not contemplated in the Lease.
5 The Department proposes amending the Lease to provide that Tenant may charge a service
6 charge of \$1.00 for online ticket sales in addition to the general rates for elevator tickets, with
7 increases in the online service charge to be reasonable and competitively priced with service
8 fees for online ticketing for similar attractions in San Francisco, and to be subject to the prior
9 written approval of the General Manager.

10 (910) On November 19, 2015, by Recreation and Park Commission Resolution
11 No. 1511-009, a copy of which is on file with the Clerk of the Board of Supervisors in File No.
12 151210, the Recreation and Park Commission recommended that the Board of Supervisors
13 approve the proposed lease amendment.

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15 (b) Approval.

16 The Board of Supervisors hereby approves and authorizes the execution of the First
17 Amendment to Lease in substantially the form on file with the Clerk of the Board of
18 Supervisors in File No. 151210 (the First Amendment), for the enhanced mural protection
19 staffing credit, the addition of space to the premises under the Lease following the Vacation
20 Action or designation by the General Manager of the Department of other additional space
21 following review and consideration in compliance with the California Environmental Quality
22 Act, a short-term rent credit on account of delay in identifying food service premises, a credit
23 for credit card servicing fees payable by Tenant attributable to elevator ticket sales,
24 percentage rent based on the sale of food and beverages, the collection by Tenant of a
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1 service fee for online elevator ticket sales not otherwise authorized under San Francisco Park
2 Code Section 12.06, and the other matters described in the First Amendment.

3 (c) Submittal.

4 Within 30 days of the First Amendment being executed by all parties, the Department
5 shall submit to the Clerk of the Board of Supervisors a completely executed copy of the First
6 Amendment for inclusion in File No. 151210. This requirement and obligation resides with the
7 Department, and is for purposes of having a complete file only, and in no manner affects the
8 validity of the approved First Amendment.

9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 Robert A. Bryan
19 Deputy City Attorney

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