

1 [Administrative Code - Delegation of Board of Supervisors Authority to Amend Certain Leases
2 for 100% Affordable Housing]

3 **Ordinance amending the Administrative Code to delegate Board of Supervisors**
4 **approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30**
5 **to the Real Estate Division and the Mayor's Office of Housing and Community**
6 **Development to amend certain existing leases regarding residual rent payments and**
7 **lender protections for 100% affordable housing projects.**

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

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

16 Section 1. Chapter 23 of the Administrative Code is hereby amended by adding
17 Section 23.42, to read as follows:

18 **SEC. 23.42. LEASE AMENDMENTS FOR 100% AFFORDABLE HOUSING.**

19 (a) As of 2023, the Mayor's Office of Housing and Community Development ("MOHCD")
20 monitors and regulates approximately 6,200 units of affordable rental housing under long-term ground
21 leases between the City and providers of such affordable rental housing. The typical term of a ground
22 lease is no less than 55 years and up to 99 years. Older ground leases, particularly those originally
23 executed by the former Redevelopment Agency of the City and County of San Francisco, include
24 restrictions on surplus cash that constrain the financial dexterity of affordable housing providers and
25 are inconsistent with current ground leases and MOHCD's surplus cash policy. In addition, the
COVID-19 pandemic caused affordable housing providers to suffer operational deficits, and amending

1 surplus cash requirements under ground leases will provide financial relief to cover such deficits. To
2 maintain affordable housing from time to time, affordable housing providers must also obtain new
3 financing and amend a ground lease to provide standard protections for a new lender. To respond to
4 these limited but pressing circumstances, delegating authority to the Director of MOHCD and the
5 Director of Property to execute certain lease amendments will reduce administrative costs and
6 streamline the City's ability to be responsive to the needs of affordable housing providers.

7 (b) Notwithstanding the requirements of Charter Section 9.118(c) and Administrative Code
8 Section 23.30, the Board of Supervisors authorizes and delegates to the Director of Property, with the
9 recommendation of the Director of the Mayor's Office of Housing and Community Development
10 ("MOHCD"), the authority to enter into and amend existing leases without seeking approval by the
11 Board of Supervisors for the amendment, provided that all the following conditions are met:

12 (1) The lease that MOHCD and the Real Estate Division intend to amend (A) has
13 already been approved by the Board of Supervisors under Charter Section 9.118(c) and Administrative
14 Code Section 23.30, or (B) was assigned to the City pursuant to the dissolution of the former
15 Redevelopment Agency of the City and County of San Francisco under Ordinance No. 215-12 and
16 Resolution No. 11-12;

17 (2) The lease that MOHCD and the Real Estate Division intend to amend is for a
18 multifamily building where 100% of the residential units (not including any units for managers) are
19 restricted to (A) income eligible households where affordability is ensured based on income, and/or (B)
20 permanent housing for homeless or formerly homeless households;

21 (3) The Director of MOHCD, or the Director's designee, determines in writing that (A)
22 the affordable housing provider is suffering financial shortfalls, and/or (B) a refinancing of the
23 affordable housing project's debt is needed for the purpose of preservation or rehabilitation;

24 (4) The Director of MOHCD, or the Director's designee, in consultation with the City
25 Attorney, determines in writing that the amendment to the existing lease is necessary to (A) mitigate the

1 financial shortfalls and to apply MOHCD’s policies on the distribution of remaining operation revenue
2 after payment of operation costs (“Residual Receipts”) under the lease, and/or (B) add requirements
3 related to government funding, and/or (C) provide reasonable protections to a lender to refinance the
4 affordable housing project’s debt;

5 (5) The amendment modifies the lease solely to (1) add, change, or remove terms
6 related to residual rent or distributions of Residual Receipts to allow the affordable housing provider to
7 retain a greater portion of Residual Receipts and require that the Residual Receipts retained by an
8 affordable housing provider shall be used solely for affordable housing purposes within the City;
9 and/or (2) add, change, or remove terms related to reasonable lender protections necessary to
10 refinance an affordable housing project’s debt; and/or (3) add, change, or remove terms related to
11 government funding for the affordable housing project; and/or (4) add, change, or remove any other
12 terms that are relevant to MOHCD’s policies on Residual Receipts; and

13 (6) The amendment does not (A) increase the liability of the City under the lease, or (B)
14 change the duration of the lease, or (C) impose any other new obligations on the City.

15
16 Section 2. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor’s veto of the ordinance.

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21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/
24 KEITH NAGAYAMA
25 Deputy City Attorney
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