

1 [Amendments to Recreation and Park Department Leases - Forgive Tenant Rent and Extend
2 Lease Terms During COVID-19 Pandemic]

3 **Ordinance authorizing the Recreation and Park Department to amend certain leases to**
4 **forgive rent and extend the lease term without Board of Supervisors’ approval under**
5 **Administrative Code, Chapter 23, and Charter, Section 9.118, and waiving for said**
6 **leases any Administrative Code and Environment Code requirements enacted after the**
7 **most recent modification of the lease, in order to address tenant financial hardships**
8 **caused by the public health emergency related to the COVID-19 pandemic.**

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

14

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

16

17 Section 1. Purpose and Findings.

18 (a) The COVID-19 pandemic has caused, and will continue to cause, abrupt and
19 serious impacts on the local economy and on the operations of local businesses and nonprofit
20 organizations. Many of these entities, including nonresidential tenants leasing space under
21 the jurisdiction of the Recreation and Park Department, are experiencing significant operating
22 deficits and hardships in paying rent for a variety of reasons, including reductions in income
23 due to lower customer demand or required closures. And many entities face unprecedented
24 challenges to remain financially solvent during this time.

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1 (b) On March 18, 2020, in the Fourth Supplement to the Mayor’s Emergency
2 Proclamation, modified on April 1 in the Eighth Supplement, and modified on September 29 in
3 the Twenty-Eighth Supplement, the Mayor ordered a temporary moratorium on evictions for
4 nonpayment of rent by certain commercial tenants on private property. The Mayor’s order
5 was designed to ensure that local businesses could continue to operate, both during and after
6 the crisis. Due to the continuing crisis, on December 11, 2020, the City adopted an ordinance
7 to restrict private landlords from evicting certain commercial tenants who were unable to pay
8 rent due to COVID-19 (Ordinance No. 254-20).

9 (c) Many City agencies lease space to nonresidential tenants for a variety of
10 business and recreational uses. On March 27, 2020, the City Administrator issued a policy
11 directing City General Fund departments to waive all late charges, default interest, and
12 associated penalties and fees for any delinquent rent payments by most of those
13 departments’ commercial tenants within San Francisco’s city limits during the period of March
14 17 through April 30, 2020 due to the impact of the COVID-19 pandemic. That policy was later
15 extended through December 31, 2020. Exclusive jurisdiction departments and commissions
16 such as the Port and Municipal Transportation Agency also adopted rent deferral policies for
17 their tenants.

18 (d) In light of the extended and significant adverse impacts of the COVID-19
19 pandemic on nonresidential tenants, the Recreation and Park Department (and other
20 departments) have been considering forgiving limited amounts of rent in appropriate
21 circumstances, for example, by adjusting terms related to the minimum annual guaranteed
22 rent or percentage rent that a tenant may owe. Unlike rent deferral, which changes the timing
23 of rent payments that are due under a lease, rent forgiveness, depending on its terms,
24 reduces or eliminates rent payments that are due. In considering rent forgiveness,
25 departments must determine how to strike the appropriate balance between providing rent

1 forgiveness for those tenants who need it while incentivizing full payment from those who can
2 pay full rent due, even on a deferred basis. While rent forgiveness provides needed financial
3 relief to the tenant, departments may also benefit in the long term from having tenants who
4 are able to continue operating and regain their ability to pay rent on a current basis, rather
5 than having vacancies to fill during the current economic downturn. Limited rent forgiveness
6 that allows a tenant to stay in operation and pay future rents may in some circumstances be
7 more beneficial to the City than strict adherence to rent requirements that could force tenants
8 into default.

9 (e) In most circumstances, the Recreation and Park Department and its tenants
10 must agree to a lease amendment to forgive rent that is otherwise due under the lease.
11 Administrative Code Chapter 23 and Charter Section 9.118 require the Board of Supervisors
12 by resolution to review and approve certain types of leases and amendments to those leases.
13 This ordinance waives the requirement for Board of Supervisors review of certain types of
14 amendments to Recreation and Park Department leases that would otherwise require
15 approval under Chapter 23 and/or Section 9.118 (a) or (c).

16 (f) In addition, the Recreation and Park Department and a tenant may mutually
17 agree that it is prudent to either extend a lease in order to avoid economic hardship caused by
18 the COVID-19 pandemic and to enable the parties make appropriate recovery plans. Charter
19 Section 9.118 and in some cases Administrative Code Chapter 23 require the Board of
20 Supervisors by resolution to approve certain types of lease modifications for leases the Board
21 initially approved under Section 9.118 or Chapter 23. This ordinance waives the requirement
22 for Board of Supervisors review of certain lease modifications that would otherwise require
23 approval under Chapter 23 and/or Section 9.118.

24 (g) The City has over the years adopted a number of Administrative Code and
25 Environment Code ordinances which are usually required to be included in new leases and in

1 amendments of existing leases entered into by City agencies. To require tenants to comply
2 with these requirements as a condition of entering into lease amendments that are intended to
3 provide rent forgiveness or term extensions would likely impose costs that further impede the
4 tenant's survival and frustrate the purpose of providing relief to ensure the tenant's ability to
5 sustain operations through this challenging period.

6 (h) This ordinance is necessary to enable the Recreation and Park Department to
7 expeditiously amend its leases to forgive rents and in certain limited and described instances
8 modify lease durations in order to provide financial relief to its tenants as soon as possible,
9 and thereby further the interests of the City, without the inevitable delay and expenditure of
10 limited staff resources that would be caused by seeking Board of Supervisors approval for
11 each of these lease amendments individually. The ordinance will enable the uninterrupted
12 and effective use of park property by enabling the Recreation and Park Department to
13 negotiate these changes quickly to ensure the best use of those properties. But, recognizing
14 the broad range of facts and circumstances faced by Recreation and Park Department
15 tenants during the COVID-19 pandemic, as well as the different terms and conditions in
16 different leases, this ordinance does not mandate that the Recreation and Park Department
17 amend a lease to forgive tenant rent or modify the lease duration, or take any other action.
18 The Recreation and Park Department shall retain discretion under this ordinance to make
19 decisions regarding its leases of City property that serve the Department's needs.

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21 Section 2. For purposes of Sections 3 and 4 of this ordinance, "Lease" shall mean any
22 Lease as defined in Administrative Code Section 23.2. For reference, Section 23.2 defines
23 "Lease" to mean "a lease, sublease, or other means of granting a right to occupy or use Real
24 Property, and shall also include a license, permit to enter, use permit, or other similar
25 instrument."

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Section 3. Amendment of Existing Leases to Forgive Rent or Extend Term; Waiver of Requirements for Board of Supervisors Approval.

The Recreation and Park Department may amend an existing Lease of its property, without approval of the amendment by the Board of Supervisors under Administrative Code Chapter 23 or Charter Section 9.118(a) or (c), and without modifying the Lease to comply with any requirements in the Administrative or Environment Codes that were enacted since the most recent modification to the Lease, provided that all the following conditions are satisfied:

(a) The Lease has already been approved by the Board of Supervisors under Chapter 23 and/or Section 9.118, if required;

(b) The amendment modifies the Lease to forgive categories or amounts of rent, fees, charges, or deposit reserves to be paid or funded by the tenant, and/or modifies the Lease to extend the term. In the reasonable discretion of the Recreation and Park Department General Manager or their designee, the amendment may but is not required to include conditions to be satisfied or other concessions to be made by the tenant as consideration for the rent forgiveness or term extension;

(c) The amendment does not modify the Lease except as permitted under this ordinance, and requires the tenant to continue to comply with all existing Lease obligations not expressly forgiven, including maintenance and repair obligations, payment of rent deferred but not forgiven, gross revenue and percentage rent reporting obligations, and tax obligations;

(d) The Recreation and Park Department General Manager, or their designee, determines in writing that the tenant has suffered financial harm as a result of the COVID-19 emergency;

(e) The Recreation and Park Department General Manager, or their designee, determines in writing that the terms of the amendment are consistent with Section 3(b) and

1 3(c) of this ordinance, and that the modifications (1) will more likely enhance the stability of
2 the Department's operations or the long-term financial viability of the property and (2) will not
3 impair the long-term financial health of the Department; and

4 (f) The tenant will be required to disclose information regarding all monies received
5 from any government-funded financial aid, grant, or loan program intended for rent; such
6 funds are not eligible for forgiveness and will be deducted from any forgiveness amount.

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8 Section 4. Transmittal to the Clerk of the Board.

9 The Recreation and Park Department shall submit a copy of each Lease amendment
10 executed under the authority of Section 3 of this ordinance to the Clerk of the Board of
11 Supervisors within 30 days of execution.

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13 Section 5. Effective Date.

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

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19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By: /s/ _____
23 MANU PRADHAN
24 Deputy City Attorney
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