

1 [Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]

2
3 **Ordinance authorizing the City Administrator to amend certain leases and forgive rent**
4 **due between January 2021 and June 2021 with nonresidential tenants, and waiving**
5 **Administrative Code and Environmental Code requirements enacted after the most**
6 **recent modification of each lease, in order to allow for expeditious rent forgiveness**
7 **necessitated by the financial hardship caused by the public health emergency related**
8 **to the COVID-19 pandemic.**

9
10 Be it ordained by the People of the City and County of San Francisco:

11 **Section 1. Findings and Purpose.**

12 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
13 response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the
14 Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by
15 the Mayor to meet the emergency.

16 (b) To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer
17 issued Order No. C19-07 generally requiring individuals to stay in their homes (“Shelter in
18 Place”), and requiring businesses to cease many non-essential operations at physical
19 locations in the City and County of San Francisco. The Health Officer’s Order continues to be
20 updated and revised to address public health issues presented by the pandemic. The Health
21 Order, as amended, still does not allow for certain businesses to resume normal operations at
22 this time or for the foreseeable future.

23 (c) The COVID-19 pandemic has caused, and will likely continue to cause, abrupt
24 and serious impacts on the local economy, on the operations of local businesses and
25 nonprofit organizations, and on the job security of employees. Many of the affected

1 businesses and other entities, including City Administrator Office’s Real Estate Division
2 tenants, are experiencing significant operating deficits and hardships in paying rent for a
3 variety of reasons, including reductions in income due to lower customer demand, required
4 closures, or limits on full-scale operations. Many of these entities face unprecedented
5 challenges to remain financially solvent during the public health emergency. These difficulties
6 cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut
7 due to the reduced customer demand or required closures or limitations on full-scale
8 operations.

9 (d) The City Administrator’s Office, Real Estate Division, leases space in City
10 owned buildings to dozens of tenants for a variety of business and recreational uses. In
11 response to the severe economic impacts on these tenants, on March 27, 2020, the City
12 Administrator issued a Memorandum, “City Policy Regarding Enforcement of Certain Tenant
13 Lease Obligations by City Departments from March 17, 2020 through April 30, 2020
14 (“Policy”)", which was updated on June 1, 2020 to extend the Policy through December 31,
15 2020, allowing City departments to (i) waive all late charges, default interest and associated
16 penalties and fees for any delinquent rent payments that were or are due for use of City
17 property within San Francisco City limits due to the impact of COVID-19, (ii) provide
18 resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent
19 arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

20 (e) On April 30, 2021, the Board of Supervisors approved and the Mayor signed
21 Ordinance No. 059-21, authorizing the City Administrator to amend three leases managed by
22 the Real Estate Division: New Asia, New Conservatory Theater Center and a pop-up
23 restaurant owned by Stephen M. Paoli to forgive rent for the time period of April 2020 through
24 December 2020.

1 (f) The City Administrator has determined that rent forgiveness, not just rent
2 deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses
3 and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide
4 the City with much needed entertainment, art, culture and small business services and
5 materials. Unlike rent deferral, which changes the timing of rent payments that are due under
6 a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent
7 payments that are due.

8 (f) Administrative Code Section 23, and Charter Section 9.118, requires the Board
9 of Supervisors to review and approve certain leases and amendments to those leases. A
10 change in the rent amount, including rent forgiveness, would require Board of Supervisors
11 approval under subsection (c) of Charter Section 9.118 and section 23.30 of Chapter 23.

12 (g) The City has over the years adopted a number of Administrative Code and
13 Environment Code ordinances the requirements of which must be included in new leases or
14 amendments of existing leases entered by City agencies. To require tenants to comply with
15 certain ordinances enacted after execution of the tenant's lease or, if applicable, the most
16 recent amendment of the lease, as a condition of entering into a new lease or a lease
17 amendment to qualify for rent forgiveness, would likely impose costs that further impede a
18 tenant's survival and frustrate the purpose of providing relief to ensure a tenant's ability to
19 sustain operations through this challenging period.

20 (h) By waiving the requirement of Board of Supervisors approval of future lease
21 amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and
22 also waiving Administrative Code and Environment Code requirements, if any, imposed on
23 leases and lease amendments when said requirements were enacted after execution of the
24 tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the
25 chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid

1 the cascade of negative impacts to the City, the tenant and the tenant’s employees, if rent
2 forgiveness is denied or delayed.

3 **Section 2. Definitions.**

4 For the purposes of this ordinance:

5 “Administrative Code and Environment Code Requirements” shall mean the
6 requirements of those Codes that are required to be included in Leases. These requirements
7 include the following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet
8 Facilities); Section 4.9-1© (Vending Machines; Nutritional Standards and Calorie Labeling
9 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising
10 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
11 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History); Chapter
12 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and Employment
13 Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements); Sections 23.50-
14 23.56 (Labor Representation Procedures In Hotel And Restaurant Developments); Section
15 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements); and
16 Sections 83.1 et seq. (First Source Hiring Program).

17 Further, these requirements include the following provisions of the Environment Code:
18 Chapter 3 (Restrictions on Use of Pesticides); Sections 802(b) and 803(b) (Tropical Hardwood
19 and Virgin Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); and
20 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance). The listing in the two
21 preceding sentences of specific requirements in the Administrative Code and Environment
22 Code is not necessarily an exhaustive list; this definition of “Administrative Code and
23 Environment Code Requirements” is intended to include all requirements of those Codes that
24 are required to be included in Leases.

25 “CARES Act” means the federal Coronavirus Aid, Relief, and Economic Security Act

1 enacted on March 27, 2020.

2 “Lease” means a lease or other means of granting a right to occupy or use real
3 property, and shall also include a license, permit to enter, use permit, or other similar
4 instrument.

5 “Payroll Costs” shall have the same meaning as “payroll costs” under the CARES Act.

6 **Section 3. Leases.**

7 (a) New Asia Restaurant.

8 (1) On or about June 28, 2017, the City and County of San Francisco,
9 Mayor’s Office of Housing and Community Development, purchased 772 Pacific
10 Avenue for development of affordable housing.

11 (2) At that time, the City was assigned the existing lease for the New Asia
12 Restaurant located on the ground floor. The New Asia Restaurant is one of the few
13 banquet locations in the District and has been a staple in the area for almost two
14 decades. It leases the space for \$22,500 per month and its lease expires December
15 31, 2021.

16 (3) The New Asia Restaurant has been closed since the middle of March
17 2020, accepted a rent deferral plan, and owed the City \$202,500 as of December 2020.

18 (4) For the period from January 2021 to June 2021, the New Asia Restaurant
19 owes another \$135,000 in rent. With the continued Health Orders requiring closure for
20 some of this time period (until and/or limited seating/outdoor seating (which is
21 physically impossible at this location), the New Asia Restaurant has remained closed
22 since the pandemic commenced and with difficulties in continuing to employ its 200
23 employees, believes it will remain closed for the foreseeable future.

1 (b) New Conservatory Theatre Center.

2 (1) The Real Estate Division leases the Lower Level of 25 Van Ness Avenue
3 (Assessor's Parcel No. 0834, Lot No. 004), in the City and County of San Francisco, to
4 The New Conservatory Theatre Center, a California non-profit corporation ("NCTC" or
5 "Tenant"), who has been leasing the lower level of 25 Van Ness and providing quality
6 live entertainment since 1984.

7 (2) On October 20, 2018, the Mayor and Board of Supervisors approved
8 Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No.
9 180769, extending the Lease through September 30, 2023.

10 (3) Having received funds from the federal CARES Act, NCTC was able to
11 pay rent through August 2020 during the pandemic and was in compliance with its
12 Lease and all lease provisions in September 1, 2020, when the Director of Property
13 granted a rent deferral per the City Administrator's March 27, 2020 memorandum.

14 (4) NCTC closed in March 2020 due to the Health Orders and remained
15 closed through June 2021; the City forgave rent due between September and
16 December 2020, in the amount of \$32,723.92, by Ordinance No. 059-21.

17 (5) A term of NCTC's Rent Deferral Agreement is that should it receive
18 further federal aid for rent from the CARES Act or similar legislation, it will commence
19 rent payments immediately to the extent and amount received even if it remains closed
20 due to the City's Health Orders.

21 (6) NCTC currently owes the City rent for January through June 2021
22 (\$8,344.60 per month) of \$50,067.60. NCTC was closed during this entire time period
23 due to COVID-19 Health Order restrictions and vaccination status of both employees
24 and the general public.

25 (7) NCTC is planning on reopening in late October 2021.

1 (d) Pop-Up Restaurant - Stephen M. Paoli.

2 (1) On May 4, 2018, the City purchased a building at 11th Street and Natoma
3 ultimately for recreation and park purposes.

4 (2) The City assumed several existing leases including a ground floor lease
5 with Stephen M. Paoli that operates a “pop-up” restaurant. The lease expired in June
6 2021, and the tenant is currently on a month to month holdover. The Recreational and
7 Park Department, which has jurisdiction over the property, is in discussions regarding a
8 new short-term lease.

9 (3) Mr. Paoli’s business has been closed since March 2020. He has one
10 employee in addition to himself. This business is his only source of income. He
11 applied for federal funds, grants and loans to help pay his rent and employee but he did
12 not receive anything.

13 (4) He pays \$2,500 per month in rent and owed \$22,500 as of December
14 2020, which was forgiven by the City under Ordinance No. 059-21.

15 (5) Mr. Paoli’s business continued to be closed for the time period of January
16 through June 2021.

17 (6) Mr. Paoli has yet to reopen gave his Mr. Paoli notice to terminate the month to
18 month lease. With less foot traffic in the area, and the cost of opening, including
19 paying back rent, he does not believe he would be able to reopen and survive.

20 (7) Mr. Paoli owes \$15,000 for the time period between January through
21 June 2021.

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23
24 **Section 4. Amendment of Existing Leases to Forgive Rent; Waiver of**
25 **Administrative Code and Environment Code Requirements.**

