

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

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3 **Ordinance authorizing the Port Commission to amend certain leases under the Port’s**
4 **Rent Forgiveness Program with nonresidential tenants without Board of Supervisors**
5 **approval under Charter, Section 9.118, and waiving Administrative Code and**
6 **Environment Code requirements enacted after the most recent modification of each**
7 **lease for lease amendments under the Port’s Rent Forgiveness Program, in order to**
8 **allow for expeditious rent forgiveness necessitated by Port tenants’ financial hardships**
9 **caused by the public health emergency related to the COVID-19 pandemic.**

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

15

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

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18 Section 1. Findings and Purpose.

19 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
20 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of
21 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
22 to meet the emergency.

23 (b) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health
24 Officer issued Order No. C19-07 generally requiring individuals to stay in their homes, and
25 requiring businesses to cease many non-essential operations at physical locations in the City.

1 The Health Officer's Order continues to be updated and revised to address public health
2 issues presented by the pandemic.

3 (c) The COVID-19 pandemic has caused, and will likely continue to cause, abrupt
4 and serious impacts on the local economy, on the operations of local businesses and
5 nonprofit organizations, and on the job security of employees. Many of the affected
6 businesses and other entities, including the Port's commercial tenants, are experiencing
7 significant operating deficits and hardships in paying rent for a variety of reasons, including
8 reductions in income due to lower customer demand or required closures or limits on full-scale
9 operations. And many of these entities face unprecedented challenges to remain financially
10 solvent during the public health emergency. These difficulties cascade beyond the operators
11 to their employees, whose jobs may be eliminated or hours cut due to the reduced customer
12 demand or required closures or limitations on full-scale operations.

13 (d) The Port Commission leases space to approximately 540 nonresidential tenants
14 for a variety of business and recreational uses. In response to the severe economic impacts
15 on Port's tenants, the Port Commission has adopted several relief measures including a
16 "Broad-Based Rent Deferral Program" (Port Commission Resolution 20-18) and an "Opt-In
17 Extended Deferral Program" (Port Commission Resolution 20-30), which defer rent due under
18 Port leases. The Port Commission has also determined that rent forgiveness, not just rent
19 deferral, is necessary to maintain its rental revenues in the long-term in order to fund its
20 operations as an enterprise department. Unlike rent deferral, which changes the timing of rent
21 payments that are due under a lease but does not change the lease terms, rent forgiveness
22 reduces or eliminates rent payments that are due.

23 (e) Based on its review of the Port's rental portfolio and budget, on
24 August 25, 2020, the Port Commission adopted Resolution 20-41, the Port's Rent
25 Forgiveness Program, which identified three targeted tenant sectors for past and future rent

1 forgiveness: (1) restaurant, retail, maritime excursion, and parking tenants who pay both base
2 and percentage rent (“Percentage Rent Tenants”); (2) certain maritime tenants; and
3 (3) certified Local Business Enterprise (“LBE”) tenants. In adopting the Port’s Rent
4 Forgiveness Program, the Port Commission determined, among other things, that the
5 program would improve the financial feasibility of its leases and preserve its tenants’ ability to
6 continue operations at the Port, which is of considerable value to both parties, while at the
7 same time meeting the Port’s own goals, including protecting its revenue streams and assets;
8 would support the Port’s maritime mission and its small local business tenants and align the
9 Port’s and tenants’ interest in promoting a shared prosperity partnership; and is in the best
10 interests of the Port’s long-term financial health. The Port’s Rent Forgiveness Program
11 authorizes the Port’s Executive Director, or the Director’s designee, to execute lease
12 amendments with a specific list of tenants in the three sectors using a form lease amendment
13 to establish the following relief: base rent forgiveness for Percentage Rent Tenants for up to
14 14 months starting in March 2020 (subject to a number of conditions including the payment of
15 percentage rent as required under the lease and as calculated based on actual sales);
16 complete rent forgiveness from March through August 2020 for maritime tenants; and
17 complete rent forgiveness for LBE tenants from March through May 2020.

18 (f) Charter Section 9.118 requires the Board of Supervisors to review and approve
19 certain leases and amendments to those leases. Approximately 32 leases that qualify for the
20 Port’s Rent Forgiveness Program would require Board of Supervisors approval under
21 subsection (a) or (c) of Charter Section 9.118.

22 (g) In addition, many of the leases targeted under the Port’s Rent Forgiveness
23 Program are long-term leases that commenced many years ago, in some cases reaching
24 back to the 1970s. The City has over the years adopted a number of Administrative Code and
25 Environment Code ordinances the requirements of which must be included in new leases or

1 amendments of existing leases entered by City agencies. To require tenants to comply with
2 certain ordinances enacted after execution of the tenant’s lease or, if applicable, the most
3 recent amendment of the lease, as a condition of now entering into a lease amendment to
4 qualify for rent forgiveness, would in some cases impose costs and new business models that
5 would frustrate the purpose of providing relief to ensure a tenant’s ability to sustain operations
6 through this challenging period.

7 (h) By waiving the requirement of Board of Supervisors approval of each specific
8 lease amendment regarding rent forgiveness under the Port’s Rent Forgiveness Program, and
9 also waiving Administrative Code and Environment Code requirements imposed on leases
10 and lease amendments when said requirements were enacted after execution of the tenant’s
11 lease or, if applicable, most recent lease amendment, this ordinance will minimize delays in
12 implementing the Port’s Rent Forgiveness Program. As a result, this ordinance will increase
13 the chances that Port tenants will be able to effectively sustain operations, and thereby avoid
14 the cascade of negative impacts to the Port, the tenant, and the tenant’s employees, if rent
15 forgiveness is delayed. In addition, because of the similarity of the circumstances facing the
16 approximately 32 Port businesses that would be accorded rent forgiveness under the Port’s
17 Rent Forgiveness Program, and in light of the safeguards contained in this ordinance, there is
18 little need for the Board of Supervisors to individually review each of those 32 lease
19 amendments providing for rent forgiveness.

20 Section 2. Definitions.

21 For purposes of this ordinance:

22 “Administrative Code and Environment Code Requirements” shall mean the
23 requirements of those Codes that are required to be included in Leases. These requirements
24 include the following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet
25 Facilities); Section 4.9-1(c) (Vending Machines; Nutritional Standards and Calorie Labeling

1 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising
2 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
3 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History);
4 Chapter 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and
5 Employment Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements);
6 Sections 23.50-23.56 (Labor Representation Procedures In Hotel And Restaurant
7 Developments); Section 23.61 (Prevailing Wage and Apprenticeship Requirements and Local
8 Hire Requirements); Section 23.70 (Labor Peace for Excursion Vessel Operations); and
9 Sections 83.1 et seq. (First Source Hiring Program). Further, these requirements include the
10 following provisions of the Environment Code: Chapter 3 (Restrictions on Use of Pesticides);
11 Section 703(b) (Indoor Air Quality); Sections 802(b) and 803(b) (Tropical Hardwood and Virgin
12 Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); Chapter 16
13 (Food Service and Packaging Waste Reduction Ordinance); and Chapter 24 (San Francisco
14 Packaged Water Ordinance). The listing in the two preceding sentences of specific
15 requirements in the Administrative Code and Environment Code is not necessarily an
16 exhaustive list; this definition of “Administrative Code and Environment Code Requirements”
17 is intended to include all requirements of those Codes that are required to be included in
18 Leases.

19 “Lease” shall mean a lease or other means of granting a right to occupy or use real
20 property, and shall also include a license, permit to enter, use permit, or other similar
21 instrument.

22 Section 3. Amendment of Existing Leases to Forgive Rent; Waiver of Requirements for
23 Board of Supervisors Approval; Waiver of Administrative Code and Environment Code
24 Requirements.

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1 The Port may amend an existing Lease of Port property for nonresidential purposes,
2 without approval of the amendment by the Board of Supervisors under Charter
3 Section 9.118(a) or (c), and without modifying the Lease to include Administrative Code and
4 Environment Code Requirements that were enacted since the most recent modification to
5 each Lease, provided that all the following conditions are satisfied:

6 (a) The Lease has already been approved by the Board of Supervisors under
7 Charter Section 9.118, if required;

8 (b) The Lease amendment, which must be in the appropriate standardized form
9 amendment without exception and without negotiation, modifies the Lease only to forgive rent
10 in the manner allowed and subject to the Port's Rent Forgiveness Program and the conditions
11 set forth in Port Commission Resolution No. 20-41 including without limitation, the following
12 terms:

13 (1) The Tenant must comply with all existing lease provisions;

14 (2) Rent is forgiven starting on March 1, 2020 for the "Forgiveness Period":

15 (A) For Percentage Rent Tenants: Base rent is waived for up to 14
16 months or less if the tenant's sales reach the threshold where percentage rent due exceeds
17 minimum base rent due for three consecutive months under existing lease terms;

18 (B) For maritime tenants: All rent for March 2020 through
19 August 2020;

20 (C) For LBE tenants: All rent for March 2020 through May 2020.

21 (3) The Tenant is required to disclose information regarding all monies
22 received from any government-funded financial aid, grant, or loan program intended for rent;
23 such funds are not eligible for forgiveness and will be deducted from any forgiveness amount;

24 (4) In order to achieve fairness for tenants that chose to pay instead of defer
25 rent under the Port's COVID-19 rent deferral programs, amounts paid during the Forgiveness

1 Period will be applied as a rent credit in equal amounts against rent payments due in the
2 period of July 1, 2021 through June 30, 2022. If a tenant's lease expires prior to July 1, 2022,
3 the lease will be extended solely for the purpose of exhausting the rent credit. Any rent credit
4 will be applied first to any pre-COVID-19 outstanding balance and unused rent credits will be
5 forfeited upon lease expiration or termination;

6 (5) The parties will release each other from claims for rent forgiven under the
7 amendment;

8 (6) In order to benefit from rent forgiveness, Percentage Rent Tenants must
9 additionally: (i) operate at least 10 days per calendar month subject to compliance with any
10 order of the San Francisco Health Officer; and (ii) report and pay percentage rent in the
11 percentage required by the existing lease. To further reduce barriers to operating, these
12 tenants are eligible for additional rent credits that can be taken immediately against
13 percentage rent owed for verified costs of improvements and equipment necessary to operate
14 under COVID-19-related restrictions;

15 (7) A tenant's failure to comply with the Lease or the amendment will result in
16 termination of rent forgiveness as of the date of default;

17 (c) The amendment does not waive, suspend, or modify any other provision or
18 obligation of either party under the existing Lease; and

19 (d) Tenants must comply with all applicable laws including all "back to work"
20 requirements and other workforce-related ordinances, orders, and laws relating to the
21 COVID- 19 pandemic, including those addressing workplace safety and employment rights.

22 Section 4. Port Discretion.

23 This ordinance does not mandate that the Port amend any Lease, grant any rent
24 forgiveness, or require the Port to take any other action. The Port retains discretion under this
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1 ordinance to make decisions regarding Port property in a manner that serves the needs of the
2 Port.

3 Section 5. Transmittal to the Clerk of the Board.

4 The Port shall submit a copy of each Lease amendment of a Lease that has already
5 been approved by the Board of Supervisors under Charter Section 9.118, and that is executed
6 under the authority of Section 3 of this ordinance, to the Clerk of the Board of Supervisors
7 within 30 days of execution of the Lease amendment.

8 Section 6. Effective Date.

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

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

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18 By: /s/ RONA H. SANDLER
Deputy City Attorney

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