

File No. 201278

Committee Item No. 9

Board Item No. 10

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 9, 2020

Board of Supervisors Meeting

Date December 15, 2020

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Airport Commission Resolution No. 20-0180</u> |
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Completed by: Linda Wong

Date December 4, 2020

Completed by: Linda Wong

Date December 10, 2020

1 [Amendments to Airport Concessions Leases - Forgive Tenant Rent During COVID-19  
2 Pandemic]

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

10

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 double underlined 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:

17

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) Flight and passenger activity at San Francisco International Airport ("the  
4 Airport") dramatically declined after the March 11, 2020 COVID-19 pandemic declaration by  
5 the World Health Organization. Although the Airport is considered essential infrastructure, the  
6 pandemic caused the number of restaurants, stores, and passenger services concessions  
7 operational at the Airport to decrease from 149 to 27, almost overnight. The rapid reduction in  
8 enplanements since March 2020 caused by the COVID-19 pandemic has inflicted a  
9 devastating financial impact on the concessions program at the Airport. Food and beverage  
10 and retails sales were down 61% for March, 97% for April, and as of September 2020, were  
11 still down 84% compared to September 2019. Passenger enplanements in April 2020 were  
12 just 3% compared to April 2019. Although passenger traffic is growing slowly, September  
13 2020 enplanements were just 21% of September 2019 levels. On March 18, 2020, as an  
14 initial emergency good faith effort to assist the Airport's concession operators, the Airport  
15 implemented the "COVID-19 Rent Deferral Program," which offered operators the option of  
16 deferring payment of all rent and fees for April and May 2020, with all deferred amounts to be  
17 paid by June 1, 2021. After June 1, 2020, minimum annual guarantee (base rent) payments  
18 by concession tenants are suspended and percentage rent is charged under the existing  
19 severe decline in enplanements provision of the concession leases.

20 (d) Forecasting passenger traffic is extremely challenging in the unprecedented  
21 environment caused by the COVID-19 pandemic, which has hit the travel industry, as well as  
22 the Airport, particularly hard. Many international borders remain closed to non-essential travel  
23 from the United States, pending progress made in treatments, vaccines, or a sustained  
24 reduction in the transmission of the virus in the United States. Likewise, non-essential travel  
25 to the United States is limited pending such progress and reduction in transmission of the

1 virus in other countries. A phased reopening plan for the Airport's concession program has  
2 been developed and is evolving as passenger activity materializes. This plan has all existing  
3 food and beverage retail locations open by June 2021. But the circumstances are fluid and  
4 Airport concessions cannot be expected to open until there is a supportable number of  
5 passengers in the surrounding terminal areas. As of November 2020, in many areas of the  
6 country and the world, there has been a resurgence of COVID-19.

7 (e) The Airport has invested significant resources over the last many years in  
8 developing its concession offerings to passengers. The Airport's award-winning concessions  
9 program is a significant source of non-aviation revenue for the Airport, as well as local  
10 employment and business opportunity in the community that the Airport serves. In many  
11 cases, the concession operators are small businesses and locally-owned. Non-aviation  
12 revenue, including from the concessions program, directly contributes to the Annual Service  
13 Payment paid by the Airport to the City, which totaled \$49.1 million for Fiscal Year 2018-2019.  
14 In the event of a concession business failure, replacing it would take a minimum of 18 months  
15 to conduct a public competitive process and construct new tenant improvements for the  
16 replacement tenant. And prospects for procuring new concession operators at the Airport are  
17 not high, as domestic travel is not expected to return to 2019 enrollment levels for three to  
18 five years.

19 (f) As a result of the federal CARES Act enacted in March 2020, the Airport was  
20 awarded approximately \$254.8 million in funding, which will be used to pay Airport operations  
21 and maintenance expenses. On June 22, 2020, the Federal Aviation Administration issued  
22 written guidance to all airport sponsors (which includes the City as owner of the Airport),  
23 encouraging temporary rent abatements and minimum annual guarantee (base rent) waivers  
24 for tenants in order to "assist their airport business communities during the COVID-19 public  
25 health emergency and to help save workers' jobs." Most concession leases provide for a

1 tenant to pay a base rent equal to the greater of (1) a Minimum Annual Guarantee (MAG)  
2 amount or (2) a percentage rent of gross revenue from their Airport operations. Although each  
3 concession lease provides for a suspension of the MAG after enplanements at the relevant  
4 boarding area of the Airport have severely declined for three consecutive months (with a  
5 percentage of rent still being due), and MAG payments were suspended under these  
6 provisions as of June 1, 2020, concession tenants still have significant fixed costs and are  
7 suffering tremendously as a result of the COVID-19 pandemic, and additional financial relief is  
8 necessary to provide adequate support.

9 (g) The Airport leases space to approximately 125 tenants that provide concessions  
10 to passengers that travel through the Airport (approximately 52 million passengers in 2019).  
11 In response to the severe economic impacts from the COVID-19 pandemic on the Airport's  
12 concession tenants, on October 6, 2020, by Resolution No. 20-0180, the Airport Commission  
13 adopted the COVID-19 Emergency Rent Relief Program, which supplements the COVID-19  
14 Rent Deferral Program adopted by Airport staff in March 2020. Resolution No. 20-0180 is on  
15 file with the Clerk of the Board of Supervisors in File No. 201278. The Airport Commission  
16 has determined that taking whatever action is prudent and reasonable to encourage business  
17 recovery, employee rehiring, and the survival and continued operation of concessions at the  
18 Airport by implementing the COVID-19 Emergency Rent Relief Program, is clearly in the best  
19 interests of the Airport and consistent with the Airport's core values. Unlike rent deferral,  
20 which changes the timing of rent payments that are due under a lease but does not change  
21 the lease terms, rent forgiveness reduces or eliminates rent payments that are due. The  
22 Airport's COVID-19 Emergency Rent Relief Program authorizes the Airport Director to  
23 execute lease amendments with the following four categories of concession tenants at the  
24 Airport: (1) food and beverage concessions; (2) retail concessions; (3) services concessions  
25 and (4) rental car concessions. The value of the relief to be provided under the Airport's

1 COVID-19 Emergency Rent Relief Program is as of November 2020 estimated to total \$21.8  
2 million. To ensure that the financial relief benefits employees of concession tenants, the  
3 COVID-19 Emergency Rent Relief Program requires concession tenants to expend a certain  
4 percentage of the rent relief on Payroll Costs (as defined under the CARES Act) and  
5 participate in an employee rehiring program.

6 (h) Charter Section 9.118 requires the Board of Supervisors to review and approve  
7 certain leases and amendments to those leases. Of the approximately 125 leases that would  
8 qualify for the Airport's COVID-19 Emergency Rent Relief Program, 102 would require Board  
9 of Supervisors approval under subsection (a) or (c) of Charter Section 9.118.

10 (i) In addition, some of the leases targeted under the Airport's COVID-19  
11 Emergency Rent Relief Program commenced over ten years ago. The City has over the  
12 years adopted a number of Administrative Code and Environment Code ordinances the  
13 requirements of which must be included in new leases or amendments of existing leases  
14 entered by City agencies. To require tenants to comply with certain ordinances enacted after  
15 execution of the tenant's lease or, if applicable, the most recent amendment of the lease, as a  
16 condition of now entering into a lease amendment to qualify for rent forgiveness, would in  
17 some cases impose costs and new business models that would frustrate the purpose of  
18 providing relief to ensure a tenant's ability to sustain operations through this challenging  
19 period.

20 (j) By waiving the requirement under Charter Section 9.118 of Board of Supervisors  
21 approval of specific lease amendments regarding rent forgiveness under the Airport's COVID-  
22 19 Emergency Rent Relief Program, and also waiving Administrative Code and Environment  
23 Code requirements imposed on leases and lease amendments when said requirements were  
24 enacted after execution of the tenant's lease or, if applicable, most recent lease amendment,  
25 this ordinance will minimize delays in implementing the Airport's COVID-19 Emergency Rent

1 Relief Program. As a result, this ordinance will increase the likelihood that Airport tenants will  
2 be able to effectively sustain operations, and thereby avoid the cascade of negative impacts  
3 to the Airport, the tenant, and the tenant’s employees, if rent forgiveness is delayed. In  
4 addition, because of the similarity of the circumstances facing the Airport concessions that  
5 would be accorded rent forgiveness under the Airport’s COVID-19 Emergency Rent Relief  
6 Program, and in light of the safeguards contained in this ordinance, there is little need for the  
7 Board of Supervisors to individually review the 102 lease amendments providing for rent  
8 forgiveness.

9 Section 2. Definitions.

10 For purposes of this ordinance, the following terms have the following meanings:

11 “Administrative Code and Environment Code Requirements” means the requirements  
12 of those Codes that are required to be included in Leases. These requirements include the  
13 following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet Facilities);  
14 Section 4.9-1(c) (Vending Machines; Nutritional Standards and Calorie Labeling  
15 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising  
16 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);  
17 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History);  
18 Chapter 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and  
19 Employment Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements);  
20 Sections 23.50-23.56 (Labor Representation Procedures In Hotel And Restaurant  
21 Developments); Section 23.61 (Prevailing Wage and Apprenticeship Requirements and Local  
22 Hire Requirements); and Sections 83.1 et seq. (First Source Hiring Program). Further, these  
23 requirements include the following provisions of the Environment Code: Chapter 3  
24 (Restrictions on Use of Pesticides); Sections 802(b) and 803(b) (Tropical Hardwood and  
25 Virgin Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); and

1 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance). The listing in the two  
2 preceding sentences of specific requirements in the Administrative Code and Environment  
3 Code is not necessarily an exhaustive list; this definition of “Administrative Code and  
4 Environment Code Requirements” is intended to include all requirements of those Codes that  
5 are required to be included in Leases.

6 “CARES Act” means the federal Coronavirus Aid, Relief, and Economic Security Act  
7 enacted on March 27, 2020.

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

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

12 “Tenant” means a concession tenant or permittee under a Lease.

13 Section 3. Amendment of Existing Leases to Forgive Rent; Waiver of Requirements for  
14 Board of Supervisors Approval under Charter Section 9.118; Waiver of Administrative Code  
15 and Environment Code Requirements.

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

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

23 (b) The Lease amendment, which must be in the appropriate standardized form  
24 amendment without exception and without negotiation, modifies the Lease only to forgive rent  
25 in the manner allowed and subject to the Airport’s COVID-19 Emergency Rent Relief Program

1 and the conditions set forth in Airport Commission Resolution No. 20-0180, including without  
2 limitation, the following terms and conditions:

3 (1) The Tenant must have a Lease meeting one of the following criteria: (i)  
4 the Lease must have a commencement date that occurred on or prior to February 1, 2020 and  
5 a term that extends through at least August 31, 2021; or (ii) the Lease is on a holdover basis;  
6 or (iii) the Lease is a concession permit with operations at the Airport as of February 1, 2020.

7 (2) The Tenant must satisfy the following ongoing general requirements: (i) if  
8 the Tenant ceased operations due to the COVID-19 pandemic, then it must recommence  
9 operations and continue to operate at the Airport in conformance with the schedule provided  
10 by the Airport through at least August 31, 2021, as the schedule may be modified from time to  
11 time by the Airport Director, in the Airport Director's sole discretion, to adjust to the operational  
12 needs of the Airport; and (ii) the Tenant must remain in good standing and not in default of its  
13 agreements, beyond notice and cure periods, or in any unresolved dispute with the City at any  
14 time during the term of the COVID-19 Emergency Rent Relief Program through August 31,  
15 2020.

16 (3) For food and beverage Tenants, the rent forgiveness includes the  
17 following: (i) MAG payments are waived for the months of March, April, and May 2020 (with  
18 percentage rent remaining due for March 2020); (ii) all Lease fees are waived for April and  
19 May 2020; and (iii) storage fees, food court cleaning fees, food court infrastructure fees,  
20 infrastructure reimbursement fees, marketing fees, and refuse fees are waived for June  
21 through December 2020. In addition, as an additional condition of receiving the rent  
22 forgiveness, food and beverage Tenants must expend 33% of their total MAG relief for March,  
23 April, and May 2020 on Payroll Costs no later than August 31, 2021.

24 (4) For retail Tenants, the rent forgiveness includes the following: (i) MAG  
25 payments are waived for the months of March, April, and May 2020 (with percentage rent

1 remaining due for March 2020); (ii) all Lease fees are waived for April and May 2020; and (iii)  
2 storage fees, food court cleaning fees, food court infrastructure fees, infrastructure  
3 reimbursement fees, marketing fees, and refuse fees are waived for June through December  
4 2020. As an additional condition of receiving the rent forgiveness, retail Tenants must expend  
5 18% of their total MAG relief for March, April, and May 2020 on Payroll Costs no later than  
6 August 31, 2021.

7 (5) For services Tenants, the rent forgiveness includes the following: (i)  
8 MAG payments are waived for the months of March, April, and May 2020 (with percentage  
9 rent remaining due for March 2020); (ii) all Lease fees are waived for April and May 2020; and  
10 (iii) storage fees, food court cleaning fees, food court infrastructure fees, infrastructure  
11 reimbursement fees, marketing fees, and refuse fees are waived for June through December  
12 2020. As an additional condition of receiving the rent forgiveness, services Tenants must  
13 expend 33% of their total MAG relief for March, April, and May 2020 on Payroll Costs no later  
14 than August 31, 2021.

15 (6) For rental car Tenants, the rent forgiveness includes the following: (i)  
16 payments of Space Rent are waived for the months of March, April, and May 2020 (with the  
17 concession fee, based on a percentage of gross revenues, remaining due for those months);  
18 and (ii) all utility costs are waived for April and May 2020. As an additional condition of  
19 receiving the rent forgiveness, rental car Tenants must expend 33% of their total Space Rent  
20 relief for March, April, and May 2020 on Payroll Costs no later than August 31, 2021.

21 (7) All Tenants participating in the Airport's COVID-19 Emergency Rent  
22 Relief Program must participate in an employee rehiring program which prioritizes the hiring  
23 and/or rehiring of laid-off and furloughed employees at SFO.

24 (8) The Airport Director may make necessary and appropriate adjustments to  
25 the COVID-19 Emergency Rent Relief Program to ensure that it: (i) is implemented in a

1 consistent manner and fairly applied to all SFO concession Tenants and (ii) continues to meet  
2 the operational requirements of the Airport and the goals of the Commission set out in Airport  
3 Commission Resolution No. 20-0180. The Airport Director must seek further approval of the  
4 Airport Commission for any material change to the terms and conditions of the program of the  
5 financial relief being offered, except that the Airport Director may implement in the Airport  
6 Director's discretion program modifications necessitated by operational circumstances or  
7 changes in applicable law, regulation, or guidance (including, without limitation, FAA  
8 guidance), as the same may be amended from time to time.

9 Section 4. Airport Discretion.

10 This ordinance does not mandate that the Airport amend any Lease, grant any rent  
11 forgiveness, or require the Airport to take any other action. The Airport retains discretion  
12 under this ordinance to make decisions regarding Airport property in a manner that serves the  
13 needs of the Airport.

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

15 The Airport shall submit a copy of each Lease amendment of a Lease that has already  
16 been approved by the Board of Supervisors under Charter Section 9.118, and that is executed  
17 under the authority of Section 3 of this ordinance, to the Clerk of the Board of Supervisors  
18 within 30 days of execution of the Lease amendment.

19 Section 6. Effective Date.

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

24

25

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: /s/  
4 CHRISTOPHER W. STUART  
Deputy City Attorney

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## LEGISLATIVE DIGEST

[Amendments to Airport Concessions Leases - Forgive Tenant Rent During COVID-19 Pandemic]

**Ordinance authorizing the Airport Commission, under the San Francisco International Airport's COVID-19 Emergency Rent Relief Program, to amend certain leases with Airport concession tenants without Board of Supervisors approval under Charter, Section 9.118, and waiving Administrative Code and Environment Code requirements enacted after the most recent modification of each lease for such lease amendments, to allow for expeditious rent forgiveness necessitated by Airport tenants' financial hardships caused by the public health emergency related to the COVID-19 pandemic.**

### Existing Law

Charter Section 9.118 requires the Board of Supervisors by resolution to review and approve certain types of leases and amendments to those leases.

In light of the extended and significant adverse impacts of the COVID-19 pandemic on concession tenants at San Francisco International Airport, in October 2020, the Airport Commission adopted a rent forgiveness program to grant standardized relief to certain targeted concession tenant sectors and authorized the Airport Director to execute lease amendments with a specific list of eligible concession tenants and permittees. Under Charter Section 9.118, approximately 102 lease amendments authorized under the Airport's program would require Board of Supervisors approval.

City law requires departments to include specific terms in lease agreements. Most of those requirements are codified in the City's Administrative and Environment Codes. When departments amend lease with their tenants, departments generally are required to modify the terms of the leases to incorporate recent changes in the Administrative and Environment Codes that have been enacted since the department initially executed the lease.

### Amendments to Current Law

This ordinance would waive the requirement for Board of Supervisors approval of certain amendments to Airport leases that are authorized under the Airport's COVID-19 Emergency Rent Relief program. The ordinance would also allow the Airport to amend leases covered under the Airport's COVID-19 Emergency Rent Relief Program without modifying the leases to comply with recently added requirements in the Administrative or Environment Codes.

FILE NO. 201278

The Airport would be required to submit a copy of each amendment to a lease that has previously been approved by Board of Supervisors to the Board of Supervisors within 30 days after execution.

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<b>Item 9</b> <b>File 20-1278</b>	<b>Department:</b> San Francisco International Airport (Airport)
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

- The proposed ordinance would authorize the San Francisco International Airport (Airport) Commission, under the Airport’s COVID-19 Emergency Rent Relief Program, to amend certain leases with Airport Concession tenants without Board of Supervisors approval under City Charter Section 9.118, and waive Administrative Code and Environment Code requirements enacted after the most recent modification of each lease for those amendments that are conducted under the Rent Relief Program.

**Key Points**

- The Airport’s COVID-19 Emergency Rent Relief Program allows the Airport Commission to amend eligible leases to waive various types of rents and fees for certain periods of time, varying by concession sector. The program is anticipated to provide rent relief to 125 tenants across four sectors of Airport concession leases: (1) Food and Beverage; (2) Retail; (3) Services; and (4) Rental Cars.
- Approximately 102 of the leases eligible for participation in the program would typically require Board of Supervisors approval for amendments, as outlined in City Charter Section 9.118(c). The proposed ordinance would waive Board of Supervisors approval for these leases so the Airport may quickly implement the program and provide tenant relief. The proposed ordinance would also waive Administrative and Environmental Code provisions for eligible leases enacted after a tenant’s original lease or most recent amendments.

**Fiscal Impact**

- The total amount of rent and fee waivers provided by the COVID-19 Emergency Rent Relief Program is estimated at \$21,269,133. The program is funded by federal CARES Act funding.
- The program would reduce the Airport Service Payment to the City’s General Fund by approximately \$1,626,843.

**Policy Consideration**

- Because the proposed ordinance waives Administrative and Environmental Code provisions and Board of Supervisors approval of lease amendments under Charter Section 9.118(c), approval of the proposed ordinance is a policy matter for the Board of Supervisors.

**Recommendation**

- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

## MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, (2) have anticipated revenues to the City of \$1,000,000, or (3) the modification, amendment or termination of these leases is subject to Board of Supervisors approval.

## BACKGROUND

Air traffic has declined due to the COVID-19 pandemic. In April 2020, passenger traffic at San Francisco International Airport (Airport) was only three percent of April 2019 levels. Passenger traffic has slowly increased, but remains well below pre-COVID projections and may take three to four years to fully recover.

After the March 17, 2020 Shelter-In-Place order throughout six Bay Area counties, the number of restaurants, stores, and passenger services locations operational at the Airport dropped from 149 to 27. To assist tenants, the Airport offered concessionaires the option of deferring payment of all rent and fees for April and May 2020, with deferred payments due by June 1, 2021 (the COVID-19 Rent Deferral Program). As of October 2020, 52 percent of food and beverage and retail locations are open, but most have reduced operating hours and some only provide take-out service. The Airport's phased reopening plan has all existing food and beverage and retail locations open by June 2021, but the situation remains fluid.

In June 2020, the Federal Aviation Administration (FAA) encouraged airports to provide temporary rent abatements and Minimum Annual Guarantee (MAG) waivers to assist airport businesses through the COVID-19 pandemic and to protect workers' jobs. The Airport received \$258.4 million in federal CARES Act funding to pay for operations and maintenance expenses. The Airport estimates that total rent relief available to Airport tenants is approximately \$21.3 million. On October 6, 2020, the Airport Commission authorized Airport staff to implement the COVID-19 Emergency Rent Relief Program.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would authorize the Airport Commission, under the Airport's COVID-19 Emergency Rent Relief Program, to amend certain leases with Airport concession tenants without Board of Supervisors approval under City Charter Section 9.118. It would also waive Administrative Code and Environment Code requirements enacted after the most recent modification of each lease for those lease amendments that are enacted under the Rent Relief Program.

### **Waiver of Administrative and Environmental Code Provisions**

Typically, Administrative and Environmental Code provisions that were enacted after the commencement of the original lease or amendments to the original lease must be included in subsequent amendments to the lease. Examples of these provisions include but are not limited to Administrative Code: Section 4.1-3 (All-Gender Toilet Facilities), Section 4.9-1(c) (Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings), Section 4.20

(Tobacco Product and Alcoholic Beverage Advertising Prohibition), Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts), Section 12F (MacBride Principles – Northern Ireland), Chapter 12K (Salary History), Chapter 12Q (Health Care Accountability), Chapter 12T (Criminal History in Hiring and Employment Decisions), Chapter 21C (Miscellaneous Prevailing Wage Requirements), Sections 23.50-23.56 (Labor Representation Procedures in Hotel and Restaurant Developments), Section 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements), and Sections 83.1 et seq. (First Source Hiring Program); and Environmental Code: Chapter 3 (Restrictions on Use of Pesticides), Sections 802(b) and 803(b) (Tropical Hardwood and Virgin Redwood Ban), Chapter 13 (Preservative-Treated Wood Containing Arsenic), and Chapter 16 (Food Service and Packaging Waste Reduction Ordinance. According to the Airport, 31 of the 125 leases included in the Covid-19 Emergency Rent Relief Program are older than five years. The Airport states that the provisions listed above are included in the leases due either to the age of the provision or the relative newness of the Airport's current concessions program.

### **Impact on Airport Tenants**

According to the proposed ordinance, approximately 102 of the leases eligible for participation in the COVID-19 Emergency Rent Relief Program would typically require Board of Supervisors approval for amendments, as outlined in City Charter Section 9.118(c). The Airport is asking to waive Board of Supervisors approval for making lease amendments under the COVID-19 Emergency Rent Relief Program in order to quickly implement the program.

As shown in Table 1 below, the COVID-19 Emergency Rent Relief Program waives various types of rents and fees for certain periods related to COVID-19, varying by concession sector.

**Table 1: COVID-19 Emergency Rent Relief Program**

<b>Concession Sector</b>	<b>Number of Leases and Permits</b>	<b>Financial Relief (All Months Shown in 2020)</b>
Food and Beverage	68	March: Waive MAG, while not waiving Percentage Rent <sup>1</sup> ; April & May: Waive all rent, fees, and utility charges; June-December: Waive storage fees, food court cleaning fees, tenant infrastructure fees, refuse fees, and marketing fees.
Retail	39	March: Waive MAG, while not waiving Percentage Rent; April & May: Waive all rent, fees, and utility charges; June-December: Waive storage fees, tenant infrastructure fees, refuse fees, and marketing fees.
Services	13	March: Waive MAG, while not waiving Percentage Rent; April & May: Waive all rent, fees, and utility charges; June-December: Waive storage fees, refuse fees, and marketing fees.
Rental Cars <sup>2</sup>	5	March: Waive Space Rent; April & May: Waive Space Rent and utility charges.
<b>Total Leases</b>	<b>125</b>	

Source: Airport

## **Program Requirements**

### Eligible Concessionaires

The COVID-19 Emergency Rent Relief Program is available to the following concessionaires:

- Concession tenants with a lease effective as of February 1, 2020 and a term extending through at least August 31, 2021;
- Concession tenants operating on a holdover basis; or
- Concession program permittees with operations at the Airport as of February 1, 2020.

### Ongoing Requirements

To receive relief under the COVID-19 Emergency Rent Relief Program, Eligible Concessionaires must satisfy the following ongoing requirements at all times prior to August 31, 2020:

- If the concessionaire ceased operations due to the COVID-19 pandemic, it must recommence operations and continue to operate through at least August 31, 2021 in

<sup>1</sup> Under Airport concession leases, tenants pay the greater of the Minimum Annual Guaranteed (MAG) rent or Percentage Rent of gross revenues. Leases typically contain a provision to suspend MAG rent when enplanements drop below 80 percent of base year enplanements for three consecutive months. Due to the impact of COVID-19 on air travel, MAG rents have been suspended, and tenants have been paying percentage rent.

<sup>2</sup> Rent relief will be for the previous leases at the On-Airport Car Rental Center, as the holdover of those leases expired August 31, 2020 and the new leases commenced September 1, 2020.

conformance with the schedule provided by the Airport. The schedule may be modified at the Airport Director’s discretion to adjust to the operational needs of the Airport.

- The concessionaire must remain in good standing and not in default of their agreements, beyond notice and cure periods, or must not be otherwise in any unresolved dispute with the City at any time during the term of the program, through August 31, 2021.

Payroll and Rehiring Program Requirements

Eligible Concessionaires with employees stationed at the Airport must have satisfied the following conditions no later than August 31, 2021:

- i. All Food and Beverage Concessions must expend at least 33 percent of their total MAG relief on “payroll costs,” as defined in the CARES Act;
- ii. Retail Concessions must expend at least 18 percent of their total MAG relief given on such payroll costs;
- iii. Services Concessions must spend at least 33 percent of their total MAG relief given on such payroll costs;
- iv. Rental Car Concessions must spend at least 33 percent of their total Rental Car Center Space Rent relief given on such payroll costs; and
- v. All concessions must participate in a hiring program which prioritizes the hiring and/or rehiring of laid-off and furloughed employees at SFO.

All concessions must track their payroll costs and provide reasonable documentation demonstrating such compliance in order to satisfy these requirements.

Additional Terms and Conditions

If any concessionaire participates in the COVID-19 Emergency Rent Relief Program but fails to satisfy the requirements by August 31, 2021, then any amounts deferred under the COVID-19 Rent Deferral Program will become immediately due and payable. Participation in the COVID-19 Emergency Rent Relief Program is not mandatory, and any concessionaire may decline financial relief and incentives being offered if they are unable or unwilling to satisfy program requirements. The Airport Director may make necessary and appropriate adjustments to the COVID-19 Emergency Rent Relief Program to ensure that it is implemented in a fair and consistent manner and continues to meet the operational requirements of the Airport and the goals of the Airport Commission.

**FISCAL IMPACT**

The Airport estimates that the total cost of the COVID-19 Emergency Rent Relief Program is approximately \$21,269,133. The program is funded by federal CARES Act funding. According to Ms. Cheryl Nashir, Airport Director of Revenue Development and Management, tenants that have participated in the COVID-19 Rent Deferral Program would have their rents and fees waived under the Rent Relief Program, while tenants that have paid rents and fees would receive rent credits. Estimated rent relief by concession sector is shown in Table 2 below.

**Table 2: Estimated Rent Relief by Concession Sector**

<b>Concession Sector</b>	<b>Number of Leases and Permits</b>	<b>MAG and Percentage Rent Waived</b>	<b>Space Rent, Utilities, and Fees Waived</b>	<b>Total Financial Relief</b>
Food and Beverage	68	\$2,743,112	\$4,278,159	\$7,021,271
Retail	39	2,955,219	851,243	3,806,462
Services	13	4,107,530	686,641	4,794,171
Rental Cars	5	-	5,647,229	5,647,229
<b>Total</b>	<b>125</b>	<b>\$9,805,862</b>	<b>\$11,463,272</b>	<b>\$21,269,133</b>

Source: Airport

As shown in Table 2 above, the COVID-19 Emergency Rent Relief Program would waive approximately \$9,805,862 in MAG and Percentage rent and approximately \$11,463,272 in Space Rent, utilities, and fees. According to Ms. Nashir, MAG and Percentage rents are eligible for the Airport Service Payment, which returns 15 percent of concession revenues to the City's General Fund, while Space Rent, utility charges, and fees are not eligible. However, for Rental Car concessions, surface space rent is eligible for the Airport Service Payment. Airport Finance staff estimates that the Rental Car surface space rent waived by the program is approximately \$1,039,759. Therefore, the impact of the program to the City's General Fund is 15 percent of MAG, Percentage Rent, and Rental Car surface space rent waived, or approximately \$1,626,843.

## **POLICY CONSIDERATION**

### **General Fund Impact**

According to the Controller's FY 2020-21 Three-Month Budget Status Report, issued November 10, 2020, the Airport Service Payment to the City's General Fund is projected to be \$15.2 million, which is \$9.9 million (39.5 percent) below budget and \$18.3 million (54.7 percent) below prior year actuals. According to Airport Finance staff, the impact of the Airport's COVID-19 Emergency Rent Relief Program to the General Fund is included in this projection.

### **Waiver of Board Contract Review and Municipal Code Requirements**

The proposed ordinance will waive the Board of Supervisors' approval of lease amendments for a subset of the approximately 125 leases eligible for the COVID-19 Emergency Rent Relief Program (estimated to be 102 leases which are subject to Board of Supervisors' approval). It will also waive compliance requirements under the Administrative Code and Environmental Code enacted after the most recent modification of each lease for those lease amendments that are entered into under the program. Because the proposed ordinance waives Administrative and Environmental Code provisions and Board of Supervisors' approval of lease amendments under Charter Section 9.118(c), we consider approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

## **RECOMMENDATION**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

AIRPORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO. **20-0180**

**AUTHORIZATION OF AIRPORT STAFF TO IMPLEMENT THE COVID-19  
EMERGENCY RENT RELIEF PROGRAM FOR AIRPORT CONCESSION TENANTS**

- WHEREAS, flight and passenger activity immediately and dramatically declined after the March 11, 2020 COVID-19 pandemic declaration by the World Health Organization; and
- WHEREAS, on March 13, 2020, President Trump declared COVID-19 a national emergency and on March 17, 2020, a “Shelter-In-Place” order was issued by public health officials from six Bay Area Counties including San Francisco and San Mateo; and
- WHEREAS, the number of restaurants, stores and passenger services concession locations in operation at the Airport went from 149 to 27 almost overnight as a result of the COVID-19 outbreak and the imposition of the Shelter-in-Place order; and
- WHEREAS, as an initial emergency good faith effort to assist its concession business partners, the Airport offered deferral of all rent and fees for April and May 2020, with such amounts to be paid by June 1, 2021; and
- WHEREAS, while concessions tenants have furloughed or laid off the majority of their employees and product costs naturally decline with a slowing or cessation of business, Airport tenants still have significant fixed costs and are suffering tremendously as a result of the COVID-19 pandemic; and
- WHEREAS, taking whatever action is prudent and reasonable to encourage business recovery, employee rehiring, and the survival and continued operation of concessions at SFO by implementing the COVID-19 Emergency Rent Relief Program is clearly in the Airport’s best interest and consistent with its core values; and
- WHEREAS, in addition, on June 22, 2020, the Federal Aviation Administration issued written guidance to all airport sponsors encouraging temporary rent abatements and minimum annual guarantee waivers for tenants in order to assist their airport business communities during the COVID-19 public health emergency and to help save workers’ jobs; and
- WHEREAS, when the majority of the concessions’ locations closed in mid-March, rent and fees continued to accrue; and
- WHEREAS, concessionaires pay the greater of a Minimum Annual Guarantee (MAG) or a percentage of Gross Receipts, as well as some or all of the following fees: food court cleaning fees, food court infrastructure fees, storage fees, retail infrastructure fees, infrastructure reimbursement fees, marketing fees, pest fees, space permit fees and refuse fees and utility charges, specifically electricity, water/sewage, gas and telecommunication charges; and

AIRPORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO. **20-0180**

- WHEREAS, although each concession lease contains language providing for a suspension of the MAG after enplanements have severely declined for three consecutive months, and MAGs were suspended effective June 1, 2020 pursuant to these provisions, additional financial relief is necessary to provide adequate support to the Airport's concession tenants; and
- WHEREAS, for food and beverage, retail and services concessions, the COVID-19 Emergency Rent Relief Program provides for the following: (1) MAGs be waived for the months March, April, and May 2020 (with percentage rent still due for March 2020); (2) all fees be waived for April and May 2020; and (3) storage fees, food court cleaning fees, food court infrastructure fees, infrastructure reimbursement fees, marketing fees, and refuse fees be waived for June through December 2020; and
- WHEREAS, for the On-Airport rent car concessions, the COVID-19 Emergency Rent Relief Program provides for a waiver of Space Rent for the months of March, April, and May 2020, and utility costs for April and May 2020; and
- WHEREAS, the COVID-19 Emergency Rent Relief Program is available only to the following categories of concessionaires: (i) concession tenants with a lease commencement date that occurred on or prior to February 1, 2020 and a term that extends through at least August 31, 2021; (ii) concession tenants operating on a holdover basis; or (iii) concession program permittees with operations at the Airport as of February 1, 2020 (each an Eligible Concessionaire); and
- WHEREAS, in order to receive the relief under the COVID-19 Emergency Rent Relief Program, at all times prior to August 31, 2021, an Eligible Concessionaire must satisfy the following ongoing general requirements: (i) if the concessionaire ceased operations due to the COVID-19 pandemic, then it must recommence operations and continue to operate at the Airport in conformance with the schedule provided by the Airport through at least August 31, 2021, as the schedule may be modified from time to time by the Airport Director, in his sole discretion, to adjust to the operational needs of the Airport and (ii) the concessionaire must remain in good standing and not in default of their agreements, beyond notice and cure periods, or in any unresolved dispute with the City at any time during the term of the program through August 31, 2020; and
- WHEREAS, for food and beverage concessions, 33% of the MAG relief granted for March, April and May 2020 must be expended on payroll costs as defined in the CARES Act, no later than August 31, 2021; and
- WHEREAS, for retail concessions, 18% of the MAG relief granted for March, April and May 2020, must be expended on payroll costs as defined in the CARES Act, no later than August 31, 2021; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. **20-0180**

WHEREAS, for services concessions, 33% of the MAG relief granted for March, April and May 2020, must be expended on payroll costs as defined in the CARES Act, no later than August 31, 2021; and

WHEREAS, for rental car concessions, 33% of the Rental Car Space Rent relief granted for March, April and May 2020, must be expended on payroll costs as defined in the CARES Act, no later than August 31, 2021; and

WHEREAS, all Eligible Concessionaires participating in the program must participate in an employee hiring program which prioritizes the hiring and/or re-hiring of laid-off and furloughed employees at SFO; and

WHEREAS, the Airport Director may make necessary and appropriate adjustments to the COVID-19 Emergency Rent Relief Program to ensure that it: (i) is implemented in a consistent manner and fairly applied to all SFO concessionaires, and (ii) continues to meet the operational requirements of the Airport and the goals of the Commission set out in this memorandum; and

WHEREAS, the Airport Director shall seek further Airport Commission approval for any material change to the terms and conditions of the program or the financial relief being offered, except that the Airport Director may implement in his discretion program modifications necessitated by operational circumstances or changes in applicable law, regulation, or guidance (including, without limitation, FAA guidance), as the same may be amended from time to time; and

WHEREAS, the value of the relief available to be granted under the COVID-19 Emergency Rent Relief Program is estimated at \$21.8 million; now, therefore, be it

RESOLVED, that this Commission hereby authorizes Staff to enter implement the COVID-19 Emergency Rent Relief Program as outlined in this Resolution and on the other terms and conditions set forth in the accompanying memorandum from the Airport Director by entering into appropriate amendments to concession agreements with Eligible Concessionaires; and

RESOLVED, that, only for those amendments to concession leases which require approval of the San Francisco Board of Supervisors under Section 9.118 of the Charter of the City and County of San Francisco, the Commission Secretary is hereby directed to request such approval.

Page 3 of 3

*I hereby certify that the foregoing resolution was adopted by the Airport Commission*  
*at its meeting of* \_\_\_\_\_

OCT 6 2020

  
Secretary



San Francisco International Airport

**MEMORANDUM**

October 6, 2020

TO: AIRPORT COMMISSION  
Hon. Larry Mazzola, President  
Hon. Eleanor Johns, Vice President  
Hon. Richard J. Guggenlime  
Hon. Everett A. Hewlett, Jr.  
Hon. Malcolm Yeung

20-0180

OCT 6 2020

FROM: Airport Director

SUBJECT: COVID-19 Emergency Rent Relief Program for Airport Concession Operators

DIRECTOR'S RECOMMENDATION: ADOPT RESOLUTION (1) AUTHORIZING AIRPORT STAFF TO ENTER INTO AMENDMENTS OF CONCESSION AGREEMENTS WAIVING RENT AND CERTAIN FEES FOR AIRPORT CONCESSIONAIRES IN RESPONSE TO THE DEVASTATING FINANCIAL IMPACT OF COVID-19, AND (2) DIRECTING THE COMMISSION SECRETARY TO OBTAIN APPROVAL OF THE BOARD OF SUPERVISORS FOR ANY LEASE AMENDMENTS AS REQUIRED UNDER SECTION 9.118 OF THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO.

**Executive Summary**

Staff recommends that the Airport Commission (Commission) authorize the waiver of certain rent and fees to encourage business recovery, employee rehiring, and continued operation of concessions at SFO as part of a COVID-19 emergency rent relief program, on the terms and conditions outlined in this memorandum (COVID-19 Emergency Rent Relief Program). SFO received \$254.8 million in CARES Act funding. The value of the relief available to be granted under the COVID-19 Emergency Rent Relief Program is estimated at \$21.8 million.

The rapid reduction in enplanements since mid-March 2020 caused by the COVID-19 pandemic has inflicted a devastating financial impact on the concessions at San Francisco International Airport (Airport or SFO). Food and beverage and retail sales were down 61% for March, 97% for April, and as of July, are still down 89% compared to the same month last year. More than 50% of the concession locations at SFO remain closed. The Airport has invested significant resources over the last many years in developing its concessions offerings to passengers. Taking steps to maintain the survival and continuity of the concessions program through the economic crisis is of critical interest to the Airport. The concessions program is a significant source of non-aviation revenue for the Airport, as well as local employment and business opportunity in the community that SFO serves. SFO's award winning program is vital to providing the high level of customer service and amenities required for a first-class international airport such as SFO.

THIS PRINT COVERS CALENDAR ITEM NO. 1

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR    LARRY MAZZOLA PRESIDENT    ELEANOR JOHNS VICE PRESIDENT    RICHARD J. GUGGENHIME    EVERETT A. HEWLETT, JR.    MALCOLM YEUNG    IVAR C. SATERO AIRPORT DIRECTOR

## **Background**

Flight and passenger activity immediately and dramatically declined after the March 11, 2020 COVID-19 pandemic declaration by the World Health Organization. On March 13, 2020, President Trump declared COVID-19 a national emergency, and on March 17, 2020, a “Shelter-In-Place” order was issued by public health officials from six Bay Area Counties, including San Francisco and San Mateo. The number of restaurants, stores and passenger services locations operational at SFO went from 149 to 27 overnight. As an initial emergency good faith effort to assist its concessions business partners, letters were forwarded in March and April 2020 to concessionaires offering them the option of deferring payment of all rent and fees for April and May 2020, with all deferred amounts to be paid by June 1, 2021 (the COVID-19 Rent Deferral Program).

Passenger traffic compared to the same month last year was just 3% for April. It is growing but slowly; July enplanements were 12% of July 2019 levels. Forecasting is extremely challenging in this unprecedented environment. Aggregating forecasts from many sources such as banks, consultants, other large hub airports and our industry groups point to a three to four-year recovery period. Forty-one percent of our food and beverage and retail locations are open, although most operate with reduced hours and some with take-out service only, as required by current public health orders, which continue to evolve with the progression of the virus. A phased reopening plan has been developed and is evolving as passenger activity materializes. That plan currently has all existing food and beverage and retail locations open by June 2021. The environment is fluid and concessions cannot be expected to open until there is a supportable number of passengers in the surrounding terminal areas.

Concessions are key to customer service and satisfaction at any large airport, and that is the case at SFO. They represent an important revenue source for the Airport and are valued employers. In many cases, our concessions are small businesses and locally-owned. In the event of a business failure, replacing a tenant would take a minimum of 18 months to conduct a public solicitation process and construct a new facility. While concession operators have had to furlough or lay off the majority of their employees and product costs naturally decline with a slowing or cessation of business, they still have significant fixed costs. Taking prudent actions and implementing the COVID-19 Emergency Rent Relief Program to support the survival of our concession operators is clearly in the Airport’s best interest and consistent with its core values.

In addition, on June 22, 2020, the Federal Aviation Administration issued written guidance to all airport sponsors encouraging temporary rent abatements and minimum annual guarantee waivers for tenants in order to assist their airport business communities during the COVID-19 public health emergency and to help save workers’ jobs. The value of the relief available to be granted under the COVID-19 Emergency Rent Relief Program is estimated at \$21.9 million. While the \$254.8 million CARES Act funding awarded to the Airport will be used to pay for operations and maintenance expenses, it is worth noting that the proposed value of the COVID-19 Emergency Rent Relief Program represents just under 10% of such total awarded amount.

When the majority of the concession locations closed in mid-March, rent and fees continued to accrue. Food & beverage concessions (Food and Beverage Concessions), retail concessions (Retail Concessions) and service provider concessions (Service Concessions) pay the greater of a Minimum Annual Guarantee (MAG) or a percentage of Gross Receipts (Concession Fee). They also pay some or all of the following fees: food court cleaning fees, food court infrastructure fees, retail infrastructure fees, infrastructure reimbursement fees, marketing fees, pest fees, space permit fees, refuse fees and utility charges; specifically, electricity, water/sewage, gas and telecommunication charges. Each concession lease contains language providing for a suspension of the MAG after enplanements have severely declined for three consecutive months (the Severe Decline in Enplanements Provision). Under this provision, MAGs were suspended effective June 1, 2020 and will resume after enplanements have recovered for a period of two months.

For these Food and Beverage Concessions, Retail Concessions and Services Concessions, Staff is recommending that the COVID-19 Emergency Rent Relief Program provide for the following: (1) waiver of MAG for the months of March, April, and May 2020 (with percentage rent still due for March 2020), (2) waiver of all fees for April and May 2020, and (3) waiver of storage fees, food court cleaning fees, food court infrastructure fees, infrastructure reimbursement fees, marketing fees, and refuse fees for June through December 2020.

The On-Airport rental car leases (Rental Car Concessions) differ from the Food & Beverage Concessions, Retail Concessions and Services Concessions. Rent for the Rental Car Concessions is also the greater of a MAG or a percentage of Gross Receipts (Rental Car Concession Fee), however space rent for the On-Airport Car Rental Center is also charged (Rental Car Center Space Rent). More significantly, the Rental Car Concession Fee is passed through to the customer in the form of a Concession Recovery Fee on each rental car contract. As with the Food and Beverage Concessions, Retail Concession and Services Concessions, MAG is suspended under the Severe Decline in Enplanements Provision, and will remain suspended until enplanements stabilize for a period of two months. Given that the Concession Recovery Fee is a pass through to customers, waiving this fee alone would not benefit the rental car operators in any meaningful way. Staff therefore recommends that the COVID-19 Emergency Rent Relief Program for Rental Car Concessions be a waiver of Rental Car Center Space Rent for the months of March, April, and May 2020 and utilities fees for April and May 2020.

The breakdown of the rent and fee forgiveness by concession type as part of the COVID-19 Emergency Rent Relief Program is set forth in the chart below (the Financial Relief Chart):

<b>Description</b>	<b>Number of leases and permits</b>	<b>Financial Relief Recommended (all months occur in 2020)</b>
Food & Beverage Concessions	68	<p>March: Waive MAG, while not waiving Percentage Rent).</p> <p>April &amp; May: Waive all rent, fees and utility charges.</p> <p>June – December: Waive storage fees, food court cleaning fees; tenant infrastructure fees; refuse fees; and marketing fees.</p>
Retail Concessions	39	<p>March: Waive MAG, while not waiving Percentage Rent.</p> <p>April &amp; May: Waive all rent, fees and utility charges.</p> <p>June – December: Waive storage fees, tenant infrastructure fees; refuse fees; and marketing fees.</p>
Services Concessions	13	<p>March: Waive MAG, while not waiving Percentage Rent.</p> <p>April &amp; May: Waive all rent, fees and utility charges.</p> <p>June – December: Waive storage fees, refuse fees and marketing fees.</p>
Rental Car Concessions	5	<p>March: Waive Space Rent</p> <p>April &amp; May: Waive Space Rent and utility charges.</p> <p>Note: The waiver of Space Rent will be under the previous leases for the On-Airport Car Rental Center, as the holdover of those leases expired August 31, 2020 and the new leases commenced September 1, 2020.</p>
<b>Total Leases</b>	<b>125</b>	

A total of 125 leases and permits are included in the COVID-19 Emergency Rent Relief Program, and are broken down as follows:

- Attachment A lists the 68 Food and Beverage Concessions;
- Attachment B lists the 39 Retail Concessions;
- Attachment C lists the 13 Services Concessions; and
- Attachment D lists the 5 Rental Car Concessions.

The foregoing Attachments are for informational purposes only. Inclusion of a concession lease or permit in the list does not guarantee eligibility for the COVID-19 Emergency Rent Relief Program, the criteria for which is set out below under “Program Requirements.”

For your reference, any level of local ownership and Airport Concession Disadvantaged Business Enterprise (ACDBE) participation in the leases is identified on the Attachments.

To ensure fairness and for efficiency, the amendments providing for the COVID-19 Emergency Rent Relief Program will be substantially standardized in form, depending on the specific category of concessionaire. In some cases, lease amendments will require Board of Supervisors approval under Charter Section 9.118.

### **Program Requirements**

#### **Eligible Concessionaires:**

The COVID-19 Emergency Rent Relief Program is available only to the following categories of concessionaires:

- concession tenants with a lease effective as of February 1, 2020 and a term that extends through at least August 31, 2021;
- concession tenants operating on a holdover basis; or
- concession program permittees with operations at the Airport as of February 1, 2020.

Concessions meeting the eligibility requirements of this section shall be referred to as “Eligible Concessionaires.” To receive relief under the COVID-19 Emergency Rent Relief Program, an Eligible Concessionaire must also continue to meet and satisfy the Ongoing Requirements and the Additional Payroll and Rehiring Program Requirements, as set forth below.

#### **Ongoing Requirements:**

In order to receive the relief under the COVID-19 Emergency Rent Relief Program, at all times prior to August 31, 2021, an Eligible Concessionaire must satisfy the following ongoing requirements:

- If the concessionaire ceased operations due to the COVID-19 pandemic, then it must recommence operations and continue to operate at the Airport in conformance with the schedule provided by the Airport through at least August 31, 2021, as the schedule may be modified from time to time by the Airport Director, in his sole discretion, to adjust to the operational needs of the Airport.

- The concessionaire must remain in good standing and not in default of their agreements, beyond notice and cure periods, or must not be otherwise be in any unresolved dispute with the City at any time during the term of the program, through August 31, 2021.

*Additional Payroll and Rehiring Program Requirements:*

In addition to the foregoing and to ensure the financial relief offered to concessions' owners also directly benefits concessions' employees, each Eligible Concessionaire with employees stationed at SFO must also have satisfied the following conditions no later than August 31, 2021: (i) all Food and Beverage Concessions must expend at least 33% of their total MAG relief on "payroll costs", as defined in the CARES Act; (ii) Retail Concessions must expend at least 18% of their total MAG relief given on such payroll costs; (iii) Services Concessions must spend at least 33% of their total MAG relief given on such payroll costs; (iv) Rental Car Concessions must spend at least 33% of their total Rental Car Center Space Rent relief given on such payroll costs, and, (v) all concessions must participate in a hiring program which prioritizes the hiring and/or re-hiring of laid-off and furloughed employees at SFO. All concessions must track their payroll costs and provide reasonable documentation demonstrating such compliance in order to satisfy this requirement.

*Additional Terms and Conditions; Existing COVID-19 Rent Deferral Program*

All amounts to be credited under the COVID-19 Rent Relief Program will be applied to concessionaire accounts upon the satisfaction of all requirements of the program, contemplated to occur on or after August 31, 2021.

If any Eligible Concessionaire elects to participate in the COVID-19 Emergency Rent Relief Program, then the amounts of rent and fees deferred under the COVID-19 Rent Deferral Program will be further deferred beyond June 1, 2021, pending successful completion of the program, but in any event no later than August 31, 2021. If any concessionaire elects to participate in the COVID-19 Emergency Rent Relief Program but fails to satisfy the requirements by August 31, 2021, then any amounts deferred under the COVID-19 Rent Deferral Program will become immediately due and payable. For any concessionaires that participated in the COVID-19 Rent Deferral Program and elect not to participate in the COVID-19 Emergency Rent Relief Program, the amounts of deferred rent will remain due and payable in full no later than June 1, 2021.

Providing they satisfied all other requirements of the COVID-19 Emergency Rent Relief Program, holdover tenants and permittees will not lose their status as Eligible Concessionaires and the benefits of the program if they cease operating at the Airport prior to August 31, 2021 at the direction or convenience of the Airport.

Participation in the COVID-19 Emergency Rent Relief Program is not mandatory, and any concessionaire may decline the financial relief and incentives being offered if they are unable or unwilling to satisfy the program requirements.

The Airport Director may make necessary and appropriate adjustments to the COVID-19 Emergency Rent Relief Program to ensure that it: (i) is implemented in a consistent manner and fairly applied to all SFO concessionaires, and (ii) continues to meet the operational requirements of the Airport and the goals of the Commission set out in this memorandum.

The Airport Director shall seek Commission approval for any material change to the terms and conditions of the program or the financial relief being offered, except that the Airport Director may implement in his discretion, program modifications necessitated by operational circumstances or changes in applicable law, regulation, or guidance (including, without limitation, FAA guidance), as the same may be amended from time to time.

### **Proposal**

Staff is recommending the implementation of the COVID-19 Emergency Rent Relief Program as outlined above and summarized in the Financial Relief Chart. The value of this relief under the program is estimated at \$21.8 million.

### **Recommendation**

I recommend the Commission (1) adopt the accompanying Resolution authorizing Staff to implement the COVID-19 Emergency Rent Relief Program as outlined in this memorandum, which will include entering into appropriate amendments with concessionaires consistent with such provisions, and (2) to direct the Commission Secretary to request the approval the San Francisco Board of Supervisors only for lease amendments for which approval is required under Section 9.118 of the Charter of the City and County of San Francisco.



Ivar C. Satero  
Airport Director

Prepared by: Cheryl Nashir  
Acting Chief Commercial Officer

Attachments

**Attachment A**

**Food and Beverage Concessions**

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
1	A&T Catering Permit No. 4244	Food Truck	X	
2	Amoura International, Inc. Lease No. 16-0312	Amoura (BA/F)	X	
3	Amy's Kitchen Restaurant Operating Company, LLC Lease No. 18-0211	Amy's Drive Thru (BA/B)	X	
4	Andale Management Group, Inc. Lease No. 10-0034	Andale (T2)	X	X
5	Andale Management Group, Inc. Lease No. 16-0012	Valencia St. Station (BA/A), 24 <sup>th</sup> & Mission Taco House (IT G, pre-security)	X	X
6	Andre-Boudin Bakery, Inc. Lease No. 17-0239	Boudin's Bakery & Café (BA/A)	X	
7	Bay Area Restaurant Group, JV Lease No. 03-0184	Max's Delicatessen (T3 East)	X	
8	Bayport Concessions, LLC Lease No. 03-0183	Koi Palace Express (BA/F)	X	X
9	Bayport Concessions, LLC Lease No. 16-0021	Koi Palace Express (IT G, pre-security)	X	X
10	BJ Annex, LLC Lease No. 10-0035	Burger Joint (T2)	X	
11	Black Point Coffee SFO, LLC Lease No. 17-0254	Black Point Coffee (BA/A)	X	X
12	Briggo, Inc. Permit No. 4735	(Specialty Coffee Vending)		
13	Bun Mee, LLC Lease No. 16-0313	Bun Mee (BA/F)	X	X
14	Bun Mee, LLC Lease No. 18-0209	Bun Mee (BA/B)	X	X
15	Burger Joint, Inc. Lease No. 03-0199	Mission Bar & Grill (BA/E)	X	
16	Café X Technologies, Inc. Permit No. 4776	(Specialty Coffee Vending)	X	
17	D-Lew Enterprises, LLC Lease No. 03-0203	Yankee Pier (BA/F)	X	
18	Elevate Gourmet Brands-SC Group Lease No. 19-0247	Pronto (BA/F)	X	

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
19	Elevate Gourmet Brands, Inc. and Aimhigh ESG, LLC, a joint venture d.b.a. Elevate Gourmet Brands Gourmet Brands – SFO Group Lease No. 18-0346	Green Beans Coffee (BA/F), San Francisco Mac & Cheese (BA/F)	X	X
20	Elevated Tastes SFO, Inc. Lease No. 16-0016	Tomokazu (BA/G)	X	
21	Fresh & Natural Permit No. 4661	Fresh & Natural (Food Truck)	X	
22	Gate 74, Inc. Lease No. 03-0189	Burger King (T3 East)	X	X
23	Gate 74, Inc. Lease No. 16-0314	Pie Five Pizza Co. (BA/F)	X	X
24	Gilly National, Inc. Lease No. 16-0242	Gilly Vending		
25	Gotham Enterprises, LLC Lease No. 03-0069	Peet's Coffee & Tea (BA/F)	X	
26	Gotham Enterprises, LLC Lease No. 03-0193	Peet's Coffee & Tea (T3 East)	X	
27	Gotham Enterprises, LLC Lease No. 10-0030	Peet's Coffee & Tea (T2)	X	
28	Green Beans Coffee Osteria – SFO Group Lease No. 14-0046	Green Beans Coffee (BA/C, pre-security)	X	X
29	Guava & Java (SFO), Inc. Lease No. 03-0191	Dogpatch Bakehouse & Caffè (BA/C & BA/E)	X	X
30	HBF Soto JV, LLC Lease No. 10-0031	Cat Cora (T2)	X	
31	HBF Soto JV, LLC Lease No. 10-0036	The Plant Organic, Pinkberry (T2)	X	
32	HFF-BRH-SFO, LLC Lease No. 16-0316	Farmerbrown (BA/C)	X	
33	High Flying Foods SFO, LLC Lease No. 16-0013	Gott's Roadside (BA/A)	X	
34	Host International, Inc. Lease No. 18-0217	The Bistrot Bay Area (BA/B)	X	X
35	Host International, Inc. Lease No. 16-0023	Starbucks (IT, Arrival level and T3, Arrival level)	X	X
36	Host International, Inc. Lease No. 16-0310	Super Duper Burger (BA/F)	X	X
37	Joe & The Juice New York, LLC Lease No. 16-0018	Joe & The Juice (BA/G)		

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
38	LN Food, LLC Lease No. 19-0016	LN Food Truck (1 <sup>st</sup> floor of the Domestic Parking Garage)	X	
39	Lady Luck Gourmet, LLC Lease No. 18-0215	Goldilocks (BA/B)	X	X
40	Lee's Industrial Catering Permit No. 4242	Food Truck	X	
41	Marina's Café Lease No. 12-0221	Marina's Café (Rental Car Center)	X	X
42	Midfield Concession Enterprises, Inc. Lease No. 16-0020	Roasting Plant (IT A, pre-security)		
43	Paradies Lagardere @ SFO 2018 (F&B), LLC Lease No. 18-0212	Bourbon Pub (BA/B)	X	X
44	Paradies Lagardere @ SFO, LLC Lease No. 16-0311	Limon Peruvian Rotisserie (BA/F)	X	X
45	Rylo Management, LLC Lease No. 19-0054	Farley's Community Café (BA/F)	X	X
46	Rylo Management, LLC Lease No. 12-0104	Three Twins Ice Cream (BA/E)	X	X
47	San Francisco Soup Company Lease No. 16-0309	Ladle & Leaf (BA/F)	X	
48	Sankaku, Inc. Lease No. 03-0180	Sankaku (T3 East)	X	X
49	Sankaku, Inc. Lease No. 10-0033	Wakaba (T2)	X	X
50	SF Foodways, LLC Lease No. 16-0022	Potrero Grill, Tapas & Taps (IT G, pre-security)	X	
51	SF Foodways, LLC Lease No. 18-0216	Flyaway by Drakes Brewing Co. (BA/B)	X	
52	SF Uncork'd, LLC Lease No. 12-0089	SF Uncork'd (BA/F)	X	
53	Soaring Food Group, LLC Lease No. 18-0214	Illy Caffè (BA/B)	X	X
54	SSP America, Inc. Lease No. 03-0200	Union Street Gastropub (T3 East)	X	X
55	SSP America, Inc. Lease No. 16-0015	Mumfresh (BA/G)	X	X
56	SSP America, Inc. Lease No. 16-0017	1300 on Fillmore (BA/G)	X	X
57	SSP America, Inc. Lease No. 16-0024	Wendy's (IT A, pre-security)	X	X
58	SSP America, Inc. Lease No. 18-0074	Sweet Maple (T2)	X	X

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
59	SSP America, Inc. Lease No. 18-0210	The Little Chihuahua (BA/B)	X	X
60	SSP America, Inc. Lease No. 17-0238	The Manufactory Food Hall (BA/A), Marina's Café (Building 676)	X	X
61	Stix SFO, LLC Lease No. 16-0019	Pick Up Stix (IT A, pre-security)		
62	Tastes on the Fly San Francisco, LLC Lease No. 03-0192	Klein's Deli (BA/E and BA/F)	X	
63	Tastes on the Fly San Francisco, LLC Lease No. 10-0029	Napa Farms Market, Vino Volo (T2)	X	
64	Tastes on the Fly San Francisco, LLC Lease No. 10-0032	Lark Creek Grill (T2)	X	
65	Tastes on the Fly San Francisco, LLC Lease No. 16-0315	San Francisco Giants Clubhouse (BA/F)	X	
66	Tastes on the Fly San Francisco, LLC Lease No. 18-0213	Starbird (BA/B)	X	
67	Tastes on the Fly, SFO International, LLC Lease No. 16-0014	Napa Farms Market (BA/G), Mustards Grill (BA/G), Samovar Tea (IT Main Hall)	X	
68	Urban Tortilla, Inc. Lease No. 03-0187	Urban Tortilla (BA/E)	X	

**Attachment B**

**Retail Concessions**

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
1	Air Sun JV Lease No. 09-0176	Sunglass Hut (BA/F)		X
2	Air Sun JV Lease No. 18-0233	Sunglass Hut (BA/E)		X
3	Air Sun JV Lease No. 18-0345	Sunglass Hut (T2)		X
4	Books, Inc. Lease No. 10-0037	Compass Books (T2)	X	
5	Books, Inc. Lease No. 15-0085	Compass Books (T3 East)	X	
6	Canonica New York, LLC Lease No. 17-0210	The Chocolate Market (BA/G)		
7	Canonica New York, LLC Lease No. 18-0073	The Chocolate Market (T2)		
8	Canonica New York, LLC Lease No. 18-0284	The Chocolate Market (BA/E)		
9	Chalo, LLC Permit No. 4757	Chalo (BA/E)		
10	DFS Group, L.P. Lease No. 17-0303	DFS Duty Free, Hermes, Gucci, Burberry, Coach (BA/A and BA/G)	X	X
11	DFS Group, L.P. Lease No. 17-0209	DFS Sunglasses and Watches (BA/A)		X
12	Emporio Rulli, Inc. Lease No. 18-0395	GR Chocolates (BA/B)	X	
13	HG SFO Retailers 2017 JV Lease No. 17-0207	Ingenuity by Hudson (BA/A)		X
14	HG SFO Retailers 2017 JV Lease No. 18-0367	49 Mile Market (BA/C)		X
15	Hudson Group (HG) Retail, LLC Lease No. 11-0210	Hudson News, San Francisco Magazine News, Tumi (BA/F)		X
16	Hudson Group (HG) Retail, LLC Lease No. 15-0227	Brookstone (IT Main Hall)		
17	Hudson Group (HG) Retail, LLC Lease No. 18-0071	Brookstone (T2)		
18	InMotion Entertainment Group, LLC Lease No. 10-0038	InMotion Entertainment (T3)		
19	InMotion SFO, LLC Lease No. 18-0203	iStore (BA/B)	X	X
20	InMotion SFO-IT, LLC Lease No. 18-0231	InMotion Entertainment (BA/A)		

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
21	InMotion SFO-T3, LLC Lease No. 18-0232	InMotion Entertainment (BA/E), Sound Balance (BA/F)		
22	L'Occitane Airport Venture, LLC Lease No. 18-0205	L'Occitane (BA/B)		X
23	Marilla Chocolate Company, Inc. Lease No. 10-0309	California Lifestyle (BA/F)	X	X
24	MRG San Francisco, LLC Lease No. 16-0256	District Market (BA/F)	X	X
25	NewZoom, LLC Lease No. 18-0175	Zoom Vending	X	
26	Pacific Gateway Concessions, LLC Lease No. 15-0075	See's Candies (BA/F)	X	
27	Paradies Lagardere @ SFO 2018, LLC Lease No. 18-0204	Mills Cargo (BA/B)	X	X
28	RAKH, Inc. Lease No. 18-0207	NYS Collection Eyewear (BA/B)	X	
29	San Francisco Museum of Modern Art Lease No. 10-0287	SFMOMA (IT Main Hall)	X	
30	Skyline Concessions, Inc. Lease No. 13-0136	Skyline News & Gifts (BA/E)	X	X
31	Skyline Concessions, Inc. Lease No. 18-0208	Skyline News (BA/B)	X	X
32	Stellar Partners, Inc. Lease No. 12-0086	Greetings from San Francisco (T3)		
33	Stellar Partners, Inc. Lease No. 17-0208	The New Stand (BA/A)	X	X
34	Stellar Partners, Inc. Lease No. 17-0211	The New Stand (BA/G)	X	X
35	The Marshall Retail Group, LLC Lease No. 18-0368	The Scoop (BA/C)	X	X
36	The Marshall Retail Group, LLC Lease No.18-0206	Departures (BA/B)	X	X
37	World Duty Free Group North America, LLC, Lease No. 15-0039	Jo Malone, Tom Ford, Aveda (T3 East)		X
38	World Duty Free Group North America, LLC, Lease No. 10-0232	Sunset News, SFO News Express, Kiehls, M. Fredric, Starbucks (T2)		
39	World Duty Free Group North America, LLC, Lease No. 12-0085	Hudson News, San Francisco Chronicle News, SF Travel News, Green Beans Coffee (IT and T3)		

**Attachment C**

**Services Concessions**

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
1	Airport Mailers, Inc. Lease No. 18-0082	Airport Mailers		
2	Airport Terminal Services, Inc. Lease No. 18-0127	Airport Butler		
3	Airport Travel Agency, Inc. Lease No. 13-0202	Airport Travel Agency and Freshen Up	X	
4	Alclear, LLC Lease No. 18-0189	Clear		
5	American Express Travel Related Services Company, Inc. Lease No. 13-0006	The Centurion Lounge		
6	Bank of America, NA Lease No. 16-0069	Bank of America ATMs		
7	Bank of America, NA Lease No. 16-0070	Bank of America ATMs		
8	Bank of America, NA Lease No. 17-0195	Bank of America ATMs		
9	Clear Channel Outdoor, Inc. Lease No 12-0231	Clear Channel Advertising		
10	SFO Shoeshine, LLC Lease No. 19-0055	SFO Shoeshine	X	
11	Smarte Carte, Inc. Lease No. 19-0069	Smarte Carte		
12	Triptel, Inc. Lease No. 13-0049	Triptel	X	
13	Wells Fargo Bank, N.A. Lease No. 17-0194	Wells Fargo ATMs		

President, District 7  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. 554-6516  
Fax No. 554-7674  
TDD/TTY No. 544-6546

**Norman Yee**

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**PRESIDENTIAL ACTION**

Date:

To: Angela Calvillo, Clerk of the Board of Supervisors

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Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No.

(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

Meeting

(Date)

(Committee)

Start Time:

End Time:

Temporary Assignment: Partial

Full Meeting

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Norman Yee, President  
Board of Supervisors

**Attachment D**

**Rental Car Concessions**

	<b>Tenant Entity and Lease Number</b>	<b>Concept</b>	<b>Local Ownership</b>	<b>ACDBE</b>
1	Avis Budget Car Rental, LLC Lease No. 08-0154	Avis, Budget		
2	DTG Operations, Inc. Lease No. 08-0156	Dollar, Thrifty		
3	Enterprise Rent A Car Co of San Francisco, LLC Lease No. 08-0155	Alamo, Enterprise, National Car Rental		
4	Fox Rent A Car, Inc. Lease No. 08-0157	Fox Rent A Car		
5	The Hertz Corporation Lease No. 08-0153	Hertz		

**From:** [Cathy Widener \(AIR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [STUART, CHRISTOPHER \(CAT\)](#); [Dyanna Quizon \(AIR\)](#)  
**Subject:** BOS E-FILE SUBMITTAL: SFO - Ordinance for Amendments to Airport Concessions Leases to Forgive Tenant Rent During COVID-19 Pandemic  
**Date:** Monday, November 9, 2020 11:51:33 AM  
**Attachments:** [20-0180 APPROVE COVID-19 Emergency Rent Relief Program for Airport Concession Operators.pdf](#)  
[01492324.DOCX](#)  
[01492337.docx](#)  
[image001.png](#)

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CITY AND COUNTY OF SAN FRANCISCO  
AIRPORT COMMISSION  
BOARD OF SUPERVISORS LEGISLATION

To: BOS Legislation

Date: November 9, 2020

RE: Amendments to Airport Concessions Leases to Forgive  
Tenant Rent During COVID-19 Pandemic

Attached please find a proposed Ordinance for enactment by the Board of Supervisors to waive Minimum Annual Guarantee rents for Airport tenants. The Ordinance would authorize the waiver of certain rent and fees to encourage business recovery, employee rehiring, and continued operation of concessions at SFO as part of a COVID-19 emergency rent relief program.

The Airport Commission has approved these waivers by adopting Resolution No. 20-0180 on October 6, 2020.

The attachments for the referenced ordinance are listed below:

- Approved Airport Commission Resolution No. 20-0180 and memorandum;
- Legislative Digest; and
- Proposed Board of Supervisors Ordinance

Contacts:

Cathy Widener, Governmental Affairs Administrator  
650-821-5023



**Cathy Widener**  
SFO  
Director | Government Affairs  
650-821-5023

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