

**City & County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Andrico Q. Penick, Director of Real Estate

November 1, 2021

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Subject: Amendments to Real Property Leases – Forgive Tenant Rent During COVID-19 Pandemic

Dear Board Members:

Attached for your consideration is an Ordinance approving and authorizing amendments to certain leases (set forth below) to forgive rent due between January 2021 and June 2021 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic.

### **Background**

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the Board of Supervisors concurred in the February 25<sup>th</sup> Proclamation and in the actions taken by the Mayor to meet the emergency.

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

The COVID-19 pandemic has caused, and will likely continue to cause, abrupt and serious impacts on the local economy, on the operations of local businesses and nonprofit organizations, and on the job security of employees. Many of the affected businesses and other entities, including City Administrator Office’s Real Estate Division tenants, are experiencing significant operating deficits and hardships in paying rent for a variety of reasons, including reductions in income due to lower customer demand, required closures, or limits on full-scale operations.

Many of these entities face unprecedented challenges to remain financially solvent during the public health emergency. These difficulties cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut due to the reduced customer demand or required closures or limitations on full-scale operations.

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

Due to various limitations on size of gatherings, mask requirements, and other Health Orders, the three businesses at issue were unable to open until June 2021 or thereafter thus the pandemic continues to be a financial hardship.

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

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

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

The City Administrator and RED previously submitted legislation which was approved by the Board and the Mayor in April 2021 forgiving rent for the tenants discussed below for the time period between March 2020 through December 2020 (Ordinance No. 059-21). Unfortunately, their financial hardship continued through January 2021 and June 2021.

## Leases

The leases at issue are:

Rent to be forgiven as set forth below for the period of January - June – December 2021:

New Asia Restaurant	\$135,000.00
New Conservatory Theatre Center	\$ 50,067.60
Paoli	\$ 15,000.00
TOTAL	\$200,067.60

### (a) New Asia Restaurant

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

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

(iii) The New Asia Restaurant has been closed since the middle of March 2020 and accepted a rent deferral plan, however, by December 2020 it owed the City \$202,500. This rent was forgiven by the Board through Ordinance No. 059-21 approved by the Board and Mayor in April 2021. With the continued Health Orders requiring closure and/or limited seating/outdoor seating (which is physically impossible at this location), the New Asia Restaurant attempted offer take-out, pre-packaged meals to cook at home, but has basically been closed since the pandemic commenced and with difficulties in continuing to employ its 200 employees, believes it will remain closed for the foreseeable future.

(iv) At this time, New Asia owes the City \$135,000 for rent during the time period of January 2021 through June 2021.

### (b) New Conservatory Theatre Center

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

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

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

(iv) NCTC was closed from March 2020 through September 2021 due to the Health Orders and reopened in October 2021. Rent for the time period of September 2020 through December 2020 was forgiven.

(v) It owes the City \$50,067.60 as of June 2021.

(c) **Pop-Up Restaurant - Stephen M. Paoli**

(i) On May 4, 2018, the City purchased a building at 11<sup>th</sup> Street and Natoma ultimately for recreation and park purposes.

(ii) The City was assigned several existing leases including a ground floor lease with Stephen M. Paoli that operates a "pop-up" restaurant. The lease terminates in June 2021.

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

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

(v) Mr. Paoli is attempting to reopen, under a month to month lease, in November 2021. At this time, he owes the City \$15,000 in outstanding rent for the time period of January 2021 – June 2021.

**Ordinance**

The Ordinance provides for the rent forgiveness to the above-mentioned leases and in the above-mentioned amounts for the time period of January through June 2021.

If you have any questions regarding the Ordinance, please contact Claudia Gorham of Real Estate at 415.713.6020 or [Claudia.gorham@sfgov.org](mailto:Claudia.gorham@sfgov.org).

Respectfully,



Claudia J. Gorham  
Acting Director of Property