



London Breed, Mayor
Naomi M. Kelly, City Administrator



Andrico Q. Penick
Director of Real Estate

December 18, 2020

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 April 2020 and December 2020 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 25th 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.

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.

By waiving the requirement of Board of Supervisors approval of future lease amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and also waiving Administrative Code and Environment Code requirements, if any, imposed on leases and lease amendments when said requirements were enacted after execution of the tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid the cascade of negative impacts to the City, the tenant and the tenant's employees, if rent forgiveness is denied or delayed.

Leases

The leases at issue are:

Rent to be forgiven as set forth below for the period of April - December 2020:

New Asia Restaurant	\$202,500.00
New Conservatory Theatre Center	\$ 32,723.92
Old Mint	\$198,000.00
Paoli	\$ 22,500.00
TOTAL	\$455,723.92

(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 has accepted a rent deferral plan and will owe the City \$202,500 as of December 2020. However, with the continued Health Orders requiring closure and/or limited seating/outdoor seating (which is physically impossible at this location), the New Asia Restaurant 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.

(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 has been able to pay rent since March 2020 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 has been closed since March 2020 due to the Health Orders and remains closed at this time and for the foreseeable future. It will owe the City \$32,723.92 as of December 2020.

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

(c) **Historic United States Mint Lease**

(i) On March 31, 2017, the City and the California Historical Society ("CHS") entered into an Exclusive Negotiation Agreement for CHS to serve as the City's "Lead Community Partner" for Phase I Due Diligence component of the Old Mint Restoration Project, which is expected to cost upwards of \$120 million.

(ii) During the analysis, inspections, testing, and refurbishment, the City desired to activate the space to prevent continued deterioration, encampments, and vandalism, as well as, support community events in the signature space. After a request for proposals/bids process, NPU, Inc., a California corporation, (an event planning and venue management company) was awarded a lease commencing March 1, 2020 and terminates in February 2022 excluding options. The City receives a base rent of \$22,000 per month and fifty percent of all venue rental fees and \$2,500 per ticketed event.

(iii) Due to the Health Orders, NPU has been unable to host or schedule any events at the Old Mint since March 2020. In addition, all pre-scheduled events have been postponed or cancelled through December 2020 for a loss of approximately \$192,000 in anticipated participation rent and approximately \$198,000 in base rent to the City as of December 2020.

(iv) The tenant applied for but did not receive any federal funds to assist with rent payments or employees' wages. The owners of the company have used their personal savings to assist in continuing to pay their employees and to remain in business.

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

(i) On May 4, 2018, the City purchased a building at 11th 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 and will owe \$22,500 as of December 2020.

Ordinance

The Ordinance provides for the rent forgiveness to the above-mentioned leases and in the above-mentioned amounts for the time period of April through December 2020.

The Ordinance also provides that the City Administrator through the Director of Property may further amend these leases, and other existing Real Estate Division managed leases, without approval of the amendment by the Board of Supervisors under Charter Section 9.118 (c) or Chapter 23, section 23.30, and without modifying the Lease to include Administrative Code and Environment Code Requirements that were enacted since the most recent modification to their Lease, provided that all of the following conditions are satisfied:

(a) The Lease has already been approved by the Board of Supervisors under Chapter 23 if required;

(b) The Lease amendment modifies the Lease only to forgive some or all of the rent owed during the time period between January 1, 2021 and June 30, 2021;

(b) The Tenant must be in compliance with all other existing lease provisions;

(c) Rent may be forgiven during the time period of January 2021 up to June 30, 2021, and this ordinance does not mandate that the City amend the Lease, grant any further rent forgiveness, or require the City Administrator or Director of Property to take any other action;

(d) Each tenant must disclose information regarding all monies received from any government-funded financial aid, grant or loan program intended for rent, including CARES Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will be deducted from any forgiveness amount;

(e) The parties will release each other from claims for rent forgiven under any amendment;

(f) Tenant’s failure to comply with the Lease or the amendment will result in termination of rent forgiveness as of the date of default;

(g) The amendment does not waive, suspend, or modify any other revision or obligation of either party under the existing Lease; and

(h) Tenant must comply with all applicable laws including all “back to work” requirements and other workforce-related ordinances, orders, and laws relating to the COVID-19 pandemic, including those addressing workplace safety and employment rights.

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

Respectfully,



Andrico Q. Penick
Director of Property