

BOARD of SUPERVISORS



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MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Andrico Penick, Director, Real Estate Division

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: June 1, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation introduced by Mayor London N. Breed:

File No. 200517

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, and Administrative Code, Section 23.30, to the Mayor's Office of Housing and Community Development (MOHCD) and the Real Estate Division, respectively, to amend certain existing leases regarding residual rent payments by providers of 100% affordable housing projects, in response to the public health emergency related to COVID-19; and to authorize the Director of MOHCD to amend certain existing loan agreements and policies without review by the Citywide Affordable Housing Loan Committee under Administrative Code, Chapter 120.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Dan Adams, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development

1 [Emergency Ordinance - Delegation of Authority to Amend Certain Leases and Agreements
2 for Affordable Housing]

3 **Emergency ordinance to delegate Board of Supervisors approval authority under**
4 **Charter, Section 9.118, and Administrative Code, Section 23.30, to the Mayor’s Office of**
5 **Housing and Community Development (MOHCD) and the Real Estate Division,**
6 **respectively, to amend certain existing leases regarding residual rent payments by**
7 **providers of 100% affordable housing projects, in response to the public health**
8 **emergency related to COVID-19; and to authorize the Director of MOHCD to amend**
9 **certain existing loan agreements and policies without review by the Citywide**
10 **Affordable Housing Loan Committee under Administrative Code, Chapter 120.**

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

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

20 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

21 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
22 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
23 of any City or County department or office required to comply with time limitations established
24 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
25 that requires the passage of this emergency ordinance.

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

5 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
6 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, Order No. C19-
7 07c on April 29, 2020, and Order No. C19-07d on May 17, 2020, directing San Franciscans to
8 stay safe in their homes. These Orders generally require individuals to stay in their homes
9 without a specific expiration date, until it is extended, rescinded, superseded, or amended in
10 writing by the Health Officer, and require businesses to cease or modify all non-essential
11 operations at physical locations in the City.

12
13 Section 2. Findings and Purpose.

14 (a) On March 23, 2020, the Mayor issued the Fifth Supplement to the February 25
15 Proclamation (“Fifth Supplement”). The Fifth Supplement imposed a temporary moratorium
16 on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19
17 crisis, which includes residential tenants living in affordable housing buildings regulated by the
18 City through the Mayor’s Office on Housing and Community Development (“MOHCD”). The
19 Board of Supervisors concurred in these actions on March 31, 2020. On April 30, 2020, the
20 Mayor issued an Executive Order prohibiting rent increases and extending the temporary
21 moratorium to June 30, 2020. Residential tenants who miss rent payments due to the
22 financial impact of COVID-19 have up to six months after the expiration of the temporary
23 moratorium to repay missed rent payments.

24 (b) As a result of COVID-19, affordable housing buildings are anticipated to experience
25 significant operating deficits. Decreased residential and commercial revenue will result from

1 the spikes in missed rent payments, underemployment, unemployment, and business
2 closures caused by the COVID-19 pandemic and orders from the Mayor and Local Health
3 Officer necessitated by the pandemic. In addition, affordable housing buildings have faced
4 annual increases to operational costs, such as expenses for janitorial, supportive services,
5 administrative support, utilities, insurance, staff salaries and repairs/maintenance, and will
6 face additional costs for supplies (such as cleaning supplies and personal protective
7 equipment). As a result of the combination of revenue losses and increased operating costs,
8 affordable housing providers will face unprecedented challenges to remain financially solvent
9 while maintaining operations at a satisfactory level at affordable housing buildings.

10 (c) The City has entered into long-term ground leases for the purpose of creating
11 100% affordable housing on City owned property, and was also assigned ground leases and
12 loan agreements with 100% affordable housing from the former Redevelopment Agency of the
13 City and County of San Francisco (“Agency”) under Ordinance No. 215-12 and Resolution No.
14 11-12. Under these ground leases, the affordable housing provider pays to the City a residual
15 rent that is based on the remaining operation revenue after payment of operation costs
16 (“Surplus Cash”), and the affordable housing provider is sometimes allowed to retain a portion
17 of the Surplus Cash under MOHCD’s loan agreements and department policy.

18 (d) In addition, certain affordable housing buildings with older ground leases and loan
19 agreements are financially burdened with restrictions on Surplus Cash and high residual rent
20 payments, and these buildings were facing challenges to remain financially solvent prior to the
21 COVID-19 pandemic. The financial impacts of the pandemic will exacerbate the financial
22 burden on these affordable housing buildings.

23 (e) Charter Section 9.118(c) and Administrative Code Section 23.30 require the Board
24 of Supervisors by resolution to review and approve certain types of long-term leases and
25 some amendments to those leases. But with some limitations, the Board may delegate

1 authority to departments in certain specific circumstances to enter into leases or amendments
2 that would otherwise require approval under Section 9.118(c). And the Board of Supervisors
3 by ordinance may waive the application of Administrative Code Section 23.30 in particular
4 circumstances.

5 (f) Administrative Code Chapter 120 authorizes MOHCD to adopt policies regulating
6 affordable housing supported by the City through loans and grants and execute amendments
7 to existing loan or grant agreements. Administrative Code Sections 120.2(b) and 120.4(b)
8 require MOHCD to seek review by the Citywide Affordable Housing Committee of any housing
9 policies and significant amendments to loan or grant agreements. As with Administrative
10 Code Section 23.30, the Board of Supervisors by ordinance may waive the application of
11 Administrative Code Sections 120.2(b) and 120.4(b).

12 (g) This emergency ordinance is necessary to enable MOHCD and the Real Estate
13 Division to amend existing leases and agreements immediately to provide financial relief to
14 certain providers of 100% affordable housing projects as soon as possible, without the
15 potential delay that could be caused by seeking Board of Supervisors approval for individual
16 lease amendments. In this respect, the emergency ordinance will ensure the uninterrupted
17 and effective operation of the City's 100% affordable housing projects and mitigate the
18 financial impacts of COVID-19 on affordable housing providers.

19

20 Section 3. Delegation of Authority to Amend Existing Leases.

21 Notwithstanding the requirements of Charter Section 9.118(c) and Administrative Code
22 Section 23.30, MOHCD and the Real Estate Division may amend existing leases without
23 seeking approval by the Board of Supervisors for the amendment, provided that all the
24 following conditions are met:

25

1 (a) The lease that MOHCD and the Real Estate Division intend to amend has already
2 been approved by the Board of Supervisors under Section 9.118(c) and Administrative Code
3 Section 23.30, or the lease to be amended was assigned to the City pursuant to the
4 dissolution of the Agency under Ordinance No. 215.12 and Resolution No. 11-12;

5 (b) The Director of MOHCD, or the Director's designee, determines that the affordable
6 housing provider will suffer financial shortfalls as a result of the financial impacts from the
7 COVID-19 emergency;

8 (c) The Director of MOHCD, or the Director's designee, in consultation with the City
9 Attorney, determines that an amendment to the existing lease is necessary to mitigate the
10 financial impact of the COVID-19 emergency and apply MOHCD policies on Surplus Cash
11 distributions to the lease;

12 (d) The amendment modifies the lease solely to add, change, or remove terms related
13 to (1) residual rent or distributions of Surplus Cash to allow the affordable housing provider to
14 retain a greater portion of Surplus Cash, including, but not limited to, amounts reported in the
15 2019 annual monitoring report; and (2) any other terms that are relevant to MOHCD policies
16 on Surplus Cash; and

17 (e) The amendment does not increase the liability of the City under the lease, change
18 the duration of the lease, or impose any other new obligations on the City.

19
20 Section 4. Suspension of Review by the Citywide Affordable Housing Loan Committee.

21 Notwithstanding the requirements of Administrative Code Sections 120.2(b) and
22 120.4(b), MOHCD may amend existing agreements and policies or waive certain
23 requirements in such agreements and policies without seeking review by the Citywide
24 Affordable Housing Loan Committee for the amendment, provided that all the following
25 conditions are met:

1 (a) The Director of MOHCD, or the Director's designee, determines that an affordable
2 housing provider will suffer financial shortfalls as a result of the financial impacts from the
3 COVID-19 emergency;

4 (b) The Director of MOHCD, or the Director's designee, in consultation with the City
5 Attorney, determines that an amendment to the existing agreement or MOHCD policy is
6 necessary to mitigate the financial impact of the COVID-19 emergency and apply MOHCD
7 policies on Surplus Cash distributions to the agreement;

8 (c) The amendment modifies the agreement or policy solely to (1) add, change, or
9 remove terms related to residual rent or distributions of surplus cash to allow an affordable
10 housing provider to retain a greater portion of Surplus Cash, including, but not limited to,
11 amounts reported in the 2019 annual monitoring report; and (2) any other terms that are
12 relevant to current MOHCD policies on Surplus Cash; and

13 (d) The amendment does not increase the liability of the City, change the duration of
14 the agreement, or impose any other new obligations on the City

15
16 Section 5. Transmittal to the Clerk of the Board.

17 MOHCD shall submit a copy of any lease amendment executed under the delegated
18 authority of Section 3 of this ordinance to the Clerk of the Board of Supervisors within 30 days
19 of execution of the lease amendment.

20
21 Section 6. Effective Date; Expiration.

22 Consistent with Charter Section 2.107, this emergency ordinance shall become
23 effective immediately upon enactment, and shall expire on the 61st day following enactment
24 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the
25 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within

1 ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the
2 ordinance.

3

4 Section 7. Supermajority Vote Required.

5 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
6 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/
11 KEITH NAGAYAMA
12 Deputy City Attorney
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LEGISLATIVE DIGEST

[Emergency Ordinance - Delegation of Authority to Amend Certain Leases and Agreements for Affordable Housing]

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, and Administrative Code, Section 23.30, to the Mayor’s Office of Housing and Community Development (MOHCD) and the Real Estate Division, respectively, to amend certain existing leases regarding residual rent payments by providers of 100% affordable housing projects, in response to the public health emergency related to COVID-19; and to authorize the Director of MOHCD to amend certain existing loan agreements and policies without review by the Citywide Affordable Housing Loan Committee under Administrative Code, Chapter 120.

Existing Law

Charter Section 9.118(c) and Administrative Code Section 23.30 require the Board of Supervisors to review and approve certain types of leases and some amendments to those leases. With some limitations, the Board may delegate authority to departments in certain specific circumstances to enter into leases or amendments that would otherwise require approval under Section 9.118(c) and Administrative Code Section 23.30.

Administrative Code Sections 120.2(b) and 120.4(b) require the Mayor’s Office of Housing and Community Development (“MOHCD”) to obtain the Citywide Affordable Housing Loan Committee’s (“Loan Committee”) review and recommendation of housing policies and significant amendments to loan agreements.

Amendments to Current Law

The proposed emergency ordinance would authorize MOHCD and the Real Estate Division, respectively, to amend existing leases without seeking approval by the Board of Supervisors for the amendment under Section 9.118(c) and Administrative Code Section 23.30, as long as: (a) the Board has previously approved the lease, or the lease was assigned to the City from the former Redevelopment Agency of the City and County of San Francisco; (b) MOHCD has determined that an affordable housing provider will suffer financial shortfalls as a result of the financial impacts from the COVID-19 emergency; (c) the amendments only add, change, or remove terms related to residual rent or surplus cash distributions; (d) the amendments don’t increase the cost or duration of the lease; and (e) the amendments meet other conditions in the ordinance.

The proposed emergency ordinance would further authorize MOHCD to amend policies and loan agreements without seeking review by the Loan Committee under Administrative Code Chapter 120, as long as: (a) MOHCD has determined that an affordable housing provider will

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suffer financial shortfalls as a result of the financial impacts from the COVID-19 emergency; (b) the amendments only add, change, or remove terms related to residual receipts or surplus cash distributions; (c) the amendments don't increase the cost or duration of the agreement; and (d) the amendments meet other conditions in the ordinance.

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