

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.**

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11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman*;
13 **Deletions to Codes** are in ~~*italics Times New Roman*~~.
14 **Board amendment additions** are in 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:

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18 Section 1. Findings and Purpose.

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

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

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

3 (c) 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.

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

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

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