CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: January 12, 2022 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item 2 **File 21-1228**	**Department:** Office of Contract Administration

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Intervision Systems LLC. The contract has a not to exceed amount of $40,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027.

Key Points

- Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. Transactions are limited to $2.5 million, typically take one to four weeks to conclude, and agreements with vendors do not specify discounts. For high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two hours of staff time, secures discounts, and allows for larger transactions.
- The Office of Contract Administration is proposing a new citywide contract with Intervision, a Juniper networking equipment re-seller. Intervision was selected using a competitive solicitation. The primary purchasers of Juniper networking products are the San Francisco International Airport (SFO) and San Francisco Public Utilities Commission (SFPUC). By entering into a manufacturer specific technology contract with Intervision, these agencies can gain the benefits described above.

Fiscal Impact

- The proposed $40 million contract not to exceed amount is based on prior spending on Juniper products. The average annual spending is $8.1 million, which OCA rounded down to a five-year amount of $40 million. OCA is proposing a $40 million contract because future purchases are expected to be less than historical average spending.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that: (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Technology Purchases

Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. The process generally consists of submission and evaluation of bids, and transactions can take one to two four weeks to conclude. These agreements do not have set list price discounts; each bid is evaluated on a low-cost basis. Because vendors sell numerous products, it is difficult to track purchases by manufacturer. Technology Marketplace transactions are capped at $2.5 million per vendor.

According to the Office of Contract Administration, for high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two staff hours, allows for transactions greater than $2.5 million, and secures discounts. An example of this is from November 2019, when the Board of Supervisors approved a $65 million agreement with ConvergeOne holdings, a Cisco product re-seller (File 19-1022). Unlike Technology Marketplace vendors, the Cisco contract defines discounts for each of the products offered. The City previously relied on the Technology Marketplace vendors for Cisco purchases.

The Office of Contract Administration is proposing a new citywide contract with Intervision, a Juniper networking equipment re-seller. The primary purchasers of Juniper networking products are the San Francisco International Airport (SFO) and San Francisco Public Utilities Commission (SFPUC). By entering into a manufacturer specific technology contract with Intervision, these agencies can gain the benefits described above.

Vendor Selection

The contract was competitively procured as per Administrative Code 21.1 through a Request for Proposals issued on September 20, 2020. Intervision was selected on the basis of guaranteeing the deepest discount on list prices of Juniper Technologies. The evaluation and ranking of respondents to the Request for Proposals are shown in Exhibit 1 below.

Exhibit 1: Juniper Re-Seller Bids

Vendor	Reseller Discount
Intervision	51.60%
Insight	42.67%

Source: OCA

OCA evaluated bids on a cost basis and determined that Intervision provided the deepest discounts for Juniper products. OCA did not evaluate how the discounts offered by Intervision compared to discounts offered by Technology Marketplace vendors.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Intervision Systems LLC. Intervision is a re-seller of networking equipment, software, and hardware/software support manufactured by Juniper Networks Inc. The contract has a not to exceed amount of $40,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027. Actual discounts on the proposed contract range from 10% to 80%, depending on the product purchased.

The contract is non-exclusive. Therefore, the City retains the option of procuring technology using Technology Marketplace vendors. Further, the City can enter into a concurrent agreement with a different re-seller.

FISCAL IMPACT

The proposed $40 million contract not to exceed amount is based on prior spending on Juniper products. The average annual spending is $8.1 million, which OCA rounded down to a five-year amount of $40 million. OCA is proposing a $40 million contract because future purchases are expected to be less than historical average spending. Actual expenditures are determined at the department level. Amendments to the proposed contract greater than $500,000 will require Board of Supervisors' approval.

RECOMMENDATION

Approve the proposed resolution.

Item 3 **File 21-1229**	**Department:** Office of Contract Administration

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Softnet Solutions LLC, a re-seller of Hewlet Packard Enterprise networking equipment, software, and hardware/software support. The contract has a not to exceed amount of $10,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027.

Key Points

- Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. Transactions are limited to $2.5 million, typically take one to four weeks to conclude, and agreements with vendors do not specify discounts. For high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two staff hours, secures discounts, and allows for larger transactions.
- The Office of Contract Administration is proposing a new citywide contract with Softnet, a Hewlet Packard Enterprise networking equipment re-seller. Softnet was selected using a competitive solicitation. The primary purchaser of Hewlet Packard Enterprise networking products is the San Francisco Public Utilities Commission. By entering into a manufacturer specific technology contract with Softnet, the City can gain the benefits described above.

Fiscal Impact

- According to information provided by the Office of Contract Administration (OCA), projected spending for these products is between $6.5 million and $7.6 million. OCA has requested a $10 million contract because that was the original solicitation amount.
- Given the projected spending, the Budget & Legislative Analyst recommends the City enter into a contract with Softnet for $7 million. Because this amount is less than $10 million, such a contract does not require Board of Supervisors approval. We therefore do not recommend the Board of Supervisors approve the proposed resolution. After speaking with the Office of Contract Administration, the Department reports that it intends to enter into a $7 million contract.

Recommendation

- Do not approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Technology Purchases

Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. The process generally consists of submission and evaluation of bids, and transactions can take one to two four weeks to conclude. These agreements do not have set list price discounts; each bid is evaluated on a low-cost basis. Because vendors sell numerous products, it is difficult to track purchases by manufacturer. Technology Marketplace transactions are capped at $2.5 million per vendor.

According to the Office of Contract Administration, for high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two staff hours, allows for transactions greater than $2.5 million, and secures discounts. An example of this is from November 2019, when the Board of Supervisors approved a $65 million agreement with ConvergeOne holdings, a Cisco product re-seller (File 19-1022). Unlike Technology Marketplace vendors, the Cisco contract defines discounts for each of the products offered. The City previously relied on the Technology Marketplace vendors for Cisco purchases.

The Office of Contract Administration is proposing a new citywide contract with Softnet, a Hewlet Packard Enterprise networking equipment re-seller. The primary purchaser of Hewlet Packard Enterprise products is the San Francisco Public Utilities Commission (SFPUC). By entering into a manufacturer specific technology contract with Softnet, the City can gain the benefits described above.

Vendor Selection

The contract was competitively procured as per Administrative Code 21.1 through a Request for Proposals issued on September 20, 2020. Softnet was selected on the basis of guaranteeing the deepest discount on list prices of HPE Technologies. The evaluation and ranking of respondents to the Request for Proposals are Shown in Exhibit 1 below.

Exhibit 1: Bid Evaluation

	Re-Seller Discount
Softnet	36.87%
CDW	33.79%
Insight	32.01%

Source: OCA

OCA evaluate bids on a cost basis and determined that Softnet provided the deepest discounts for HPE products. OCA did not evaluate how the discounts offered by Softnet compared to discounts offered by Technology Marketplace vendors.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Softnet Solutions LLC, a re-seller of Hewlet Packard Enterprise networking equipment, software, and hardware/software support. The contract has a not to exceed amount of $10,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027. Actual discounts ranged from 30 percent to 44 percent, depending on the product purchased.

The contract is non-exclusive. Once approved, City Departments retains the option of procuring technology on the Technology Marketplace. Further, the City can enter into a concurrent agreement with a different re-seller.

FISCAL IMPACT

According to information provided by the Office of Contract Administration, average annual spending on Hewlet Packard Enterprise products is approximately $1.2 million. Over the five-year term of the proposed contract, spending (including sales tax) would total between $6.5 million and $7.6 million, assuming a range of zero to five percent annual inflation. OCA requested a $10 million contract because that was the original solicitation amount.

Given the projected spending, the Budget & Legislative Analyst recommends the City enter into a contract with Softnet for $7 million. Because this amount is less than $10 million, such a contract does not require Board of Supervisors approval. We therefore do not recommend the Board of Supervisors approve the proposed resolution. After speaking with the Office of Contract Administration, the Department reports that it intends to enter into a $7 million contract.

RECOMMENDATION

Do not approve of the proposed resolution.

Item 4 **File 21-1133**	**Department:** Recreation & Parks

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would: (a) approve a new lease with the Dolphin Swimming and Boating Club (Dolphin Club), (b) waive market rent determination required by Administrative Code Section 23.30, and (c) affirm the Planning Department's determination that the lease is not subject to review under the California Environmental Quality Act.

Key Points

- The Dolphin Swimming and Boating Club is a non-profit membership organization that operates a clubhouse at Aquatic Park. Their original lease with the City expires in 2028.
- Under the proposed lease, the Dolphin Club is responsible for maintenance, utilities, and taxes. The Dolphin Club is also responsible for paying for the capital improvements, which are expected to have a useful life of 30 years. The current lease, which expires in June 2028, is being terminated early to allow for the proposed lease with a longer term in order to amortize the cost of capital improvements. The scope, timeline, and cost of the improvements are not yet final, but are currently expected to cost approximately $2.75 million. The final set of capital improvement projects, as well as any associated contracts, are subject to approval by the Recreation and Parks General Manager.

Fiscal Impact

- Consistent with the current lease, the proposed lease provides the City 10% of the Dolphin Club's revenues as rent for the City property. However, the proposed lease reduces the City's share of the Dolphin Club's revenue from 10% to 4% for any revenue raised for Dolphin Day, the Dolphin Club's annual fundraiser that it intends to start during the proposed lease. The foregone revenue in the new lease rent structure are projected to be $300 to $600 per year.
- The Department expects $80,000 per year in annual rent revenues, which total $2.5 million over the initial 25-year term.

Policy Consideration

- The lease only requires the Dolphin Club to be open for public access three days per week. A similar lease for the South End Rowing Club, next door to the Dolphin Club, provides for alternating three days of public access, such that the public may access one of the two sites six days per week (not Sunday).
- As noted above, the proposed ordinance waives the requirement for market rate rent. According to the Recreation and Parks Director of Property, the market rate rent is not appropriate because the premises are partially open to the public three days per week and membership is open to the public.

Recommendation

- The proposed lease terms are consistent with a similar lease for South End Rowing Club approved by the Board of Supervisors in July 2019 (File 19-0463), we therefore recommend approval of the proposed ordinance.

MANDATE STATEMENT

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that have anticipated revenues of $1 million or more are subject to Board of Supervisors approval.

BACKGROUND

Current Lease

The Recreation and Parks Department has a lease with the Dolphin Swimming and Boating Club for premises around Aquatic Park. The original lease was signed in July 1979 and expires in June 2028.

Dolphin Swimming and Boating Club

The Dolphin Swimming and Boating Club is a non-profit membership organization that operates a clubhouse at Aquatic Park. The Dolphin Club organizes swimming, boating, and other athletic activities and has a weight room and sauna. The premises are open to the public three days per week for a day use fee, but otherwise access is restricted to dues-paying members.[1] Going forward, each year, the Dolphin Club will host an annual fundraiser, Dolphin Day.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would: (a) approve a new lease with the Dolphin Swimming and Boating Club (Dolphin Club), (b) waive market rent determination required by Administrative Code Section 23.30, and (c) affirm the Planning Department's determination that the lease is not subject to review under the California Environmental Quality Act.

Lease Terms

Exhibit 1 below shows the proposed lease terms.

[1] According to the Recreation and Parks Department, the Dolphin Club had 2,010 day-use visitors in 2018 and 2,755 day-use visitors in 2019. The Dolphin Club currently has 1,822 members.

Exhibit 1: Proposed Lease Terms

Premises	Building, dock, and land on and around 502 & 504 Jefferson Street
Term	25 years, One 24-year extension at Lessee's option
Rent	10% of gross receipts, Except for annual Dolphin Day, on which the City would collect 4% of gross receipts
Maintenance	Tenant responsibility
Capital Improvements	Tenant responsible for cost; owned by City
Utilities	Tenant responsibility
Taxes	Tenant responsibility
Security Deposit	None
Public Access	Monday, Wednesday, Friday
Membership Fees	Day Use: $10 Initiation: $127 Locker: $100 Annual Membership: $542; Allowable escalation: Annual CPI adjustment

Source: Proposed Lease

As noted above, the proposed lease has an initial term of 25 years, with an optional 24-year extension exercisable at the tenant's discretion. The City has the right to reject the extension. The premises consist of land granted by the State to the City. According to the Recreation and Parks Department, the State's grant of the land limits leasing to less than 50 years.

The proposed lease adds land under the dock that is under the jurisdiction of the Port, which is documented in a Memorandum of Understanding between the Port and the Recreation and Parks Department. According to Recreation and Parks staff, this land is currently used to support the dock at the Dolphin Club and the proposed lease properly documents that use. The public access schedule and fee structure is not changed in the proposed lease.

City and Tenant Responsibilities

As shown above, the Dolphin Club is responsible for maintenance, utilities, and taxes. Any changes to the organization's bylaws, membership policies, public access schedule or fee are subject to the Recreation and Parks Commission's approval. The proposed lease also states that the Dolphin Club must comply with the Recreation and Parks Department's policy for private organizations' use of Department property. That policy requires public access to the property, non-discrimination in accepting members, and allows for fees to be charged for use of the property.

Capital Improvements

According to the proposed lease, the Dolphin Club intends to undertake capital improvements, including upgrading the building foundation and systems, renovation of the building's galley and weight room areas, and other unspecified improvements. The Dolphin Club is responsible for paying for the capital improvements, which are expected to have a useful life of 30 years. The current lease, which expires in June 2028, is being terminated early to allow for the proposed lease with a longer term in order to amortize the cost of the capital improvements. The proposed lease has an initial term of 25 years, which is less than the useful life of the expected capital improvements.

The scope, timeline, and cost of the improvements are not yet final but are currently expected to cost approximately $2.75 million, of which approximately $2 million has been raised. The final set of capital improvement projects, as well as any associated contracts, are subject to approval by the Recreation and Parks General Manager. Under the proposed lease, these contractors are subject to the City's prevailing wage requirements, but not competitive bidding.

FISCAL IMPACT

Consistent with the current lease, the proposed lease provides the City 10 percent of the Dolphin Club's revenues as rent for the City property. However, the proposed lease reduces the City's share of the Dolphin Club's revenue from 10 percent to 4 percent for any revenue raised for Dolphin Day, the Dolphin Club's annual fundraiser that it intends to start during the proposed lease. Dolphin Day revenues are expected to be $5,000 - $10,000 per year so the foregone revenue in the new lease rent structure are projected to be $300 to $600 per year.

According to the Recreation and Parks Director of Property, the Department expects $80,000 per year in annual rent revenues from the new lease. Assuming 2 percent annual inflation over the initial 25-year term, the proposed lease would generate approximately $2.5 million in total revenues.[2]

POLICY CONSIDERATION

Public Access

Under City Charter Section 4.113, the Recreation and Parks Department must promote and foster a program of organized public recreation of the highest standards. According to Recreation and Parks Commission policy, Recreation and Parks Department property leased to private organizations is to be accessible to the public on the same terms as the members of the private organization. However, the lease only requires the Dolphin Club to be open for public access three days per week. A similar lease for the South End Rowing Club, next door to the Dolphin

[2] According to the Department, FY 2018-19 revenues were $75,869, FY 2019-20 revenues were $82,076, and FY 2020-21 revenues were $66,392.

Club, provides for alternating three days of public access, such that the public may access one of the two sites six days per week (not Sunday).

Market Rate Rent Determination Waived

Administrative Code Section 23.30 requires the Recreation and Parks Department to determine the market rate rent of City-owned property. As noted above, the proposed ordinance waives this requirement. According to the Recreation and Parks Director of Property, market rate rent is not appropriate because the premises are partially open to the public three days per week and membership is open to the public.

Recommendation

The proposed lease terms are consistent with a similar lease for South End Rowing Club approved by the Board of Supervisors in July 2019 (File 19-0463), we therefore recommend approval of the proposed ordinance.

RECOMMENDATION

Approve the proposed ordinance.

Item 8 **File 21-1163**	**Department:** City Administrator

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would allow the Director of Property to amend three leases to forgive rent due between January through June 2021, totaling $200,067.60, without adding Administrative and Environmental Code provisions enacted since the leases were executed.

Key Points

- In response to the pandemic, the City Administrator has waived late charges, fees, and penalties related to unpaid rent for all commercial tenants between April 2020 and December 2020 but required resumption of rent in January 2021. Late repayment penalties were due to commence for any deferred rent not paid by June 2021.
- In April 2021, the Board authorized rent forgiveness of $258,215 for three City tenants for rent due between April and December 2020: (1) New Asia Restaurant, (2) New Conservatory Theater Center, and (3) Stephen M. Paoli. These three tenants continued to be unable to pay rent due between January 2021 and June 2021. The City Administrator now believes additional rent forgiveness is needed for these three tenants for outstanding rent for this period. Two of these tenants, New Asia Restaurant and Stephen M. Paoli, have also been unable to pay rent from July 2021 to December 2021, totaling at least $142,500.

Fiscal Impact

- The proposed legislation would result in a known reduction in revenues of $200,067.60, of which $50,067.60 are non-dedicated and $150,000 are dedicated General Fund reductions.

Policy Consideration

- The proposed ordinance only provides rent forgiveness for rent outstanding from January to June 2021, however, two of the tenants targeted by the legislation have an additional $142,500 in unpaid rent for July to December 2021. Real Estate Division staff are unable to confirm whether New Asia Restaurant would be able to repay unpaid rent and noted that Stephen M. Paoli has indicated he is unable to repay the additional outstanding rent.
- Other City tenants with outstanding rent for January to June 2021 of $200,271 are still in negotiation with the Real Estate Division or have reached other agreements. These tenants declined rent deferrals but were not offered rent forgiveness.

Recommendations

- Request that the Real Estate Division and Mayor's Office of Housing and Community Development provide information on the additional outstanding rent not covered by the Ordinance and their plans to recover or request forgiveness for this rent before approving the legislation.
- 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, or anticipated to have revenues to the City of $1,000,000 or more, or (2) the modification, amendment, or termination of any such leases, is subject to Board of Supervisors approval.

City Administrative Code Section 23.30 states that the Board of Supervisors can authorize the Director of Property to lease any City-owned property that is not required for the purposes of the Department. The Director of Property is also required to lease City Property for no less than market rent unless authorized by the Board of Supervisors for a "proper public purpose." This authority excludes month-to-month and year-to-year leases with a fair market rental value of $15,000 or less per month which the Director of Property can enter without Board approval, per Section 23.31.

BACKGROUND

On March 27, 2020,[1] the City Administrator issued a memo to all City departments regarding the enforcement of tenant lease obligations for private and non-profit tenants of City-owned property in response to the COVID-19 pandemic and related public health orders. This memo set out a City policy which provided the following relief for commercial City tenants: (1) waived all late charges, interest and other penalties related to late payment of rent from March 17 to December 31, 2020 due to the impact of COVID-19, (2) required the resumption of timely rent payment on January 1, 2021, and (3) specified that any delinquent rent not repaid by June 30, 2021 would be subject to applicable interest and penalties thereafter. The policy authorized City departments to provide further relief to tenants if warranted. This policy only applied to General Fund departments and not enterprise departments.

The policy was intended to provide COVID-19-affected City tenants the ability to retain their leasehold while using financial reserves for other operational needs, including payroll, to remain in business.

On April 30, 2021, the Board of Supervisors approved Ordinance No. 059-21 (File 21-0001) which authorized the City Administrator to amend three leases managed by the Real Estate Division to provide rent forgiveness for outstanding rent due from April to December 2020 in the amount of $257,723.92. The three tenants who received rent forgiveness were: New Asia Restaurant (772 Pacific Ave.), New Conservatory Theater Center (25 Van Ness Ave.), and Stephen M. Paoli (11th St. & Natoma St.).

Due to the continuing impact of the COVID-19 pandemic on the restaurant and entertainment sectors and related health orders, the City Administrator believes additional rent forgiveness is

[1] The memo was subsequently updated on June 1, 2020 to extend protections to December 31, 2020.

needed for these three tenants to cover rent due between January and June 2021. Total rent outstanding for these tenants for this period is estimated to be $200,007.60.

According to data provided by the Real Estate Division, there are four other City tenants who have missed rent payments due between January and June 2021, totaling approximately $250,600. The Real Estate Division has reached rent repayment agreements with one of these, a separate agreement was reached with another as part of termination of the lease, and discussions are ongoing with the two remaining. The tenants include a private retail/ food service firm, a small professional services business, a non-profit business, and an event management company.

Status of Other City Properties Leased to Private or Non-Profit Tenants

According to Chapter 23 of the Administrative Code, the Director of Property (head of the City Administrator's Real Estate Division) is generally responsible for determining the market rent, entering into leases, and collecting rents for City-owned property. This does not apply to the Recreation and Parks Commission, Public Utilities Commission, Airport Commission, Port Commission, and Airport Commission, who are authorized to manage and lease property under their jurisdiction directly. The Municipal Transportation Agency is also authorized to enter into and manage leases for its property directly.

According to the Real Estate Division, there are approximately 98 properties where the City is the landlord. Of these, around 90 are agreements with non-profit or commercial tenants, with the remaining eight being agreements between City departments or between a City department and the Real Estate Division.[2] The Real Estate Division collects rent for around 57 of these properties and City departments collect rent for the remaining 33 properties.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would authorize the City Administrator to amend leases with three commercial tenants to forgive $200,067.60 in rent that was due between January and June 2021.[3] The ordinance would also waive Administrative and Environmental Code requirements that have been enacted since the leases originally went into effect.

Impact on City Tenants (Real Estate Division Managed Leases Only)

According to City Administrative Code Section 23.30, any lease of City-owned property for a term greater than a year, must be at market rent, unless approved by the Board of

[2] Approximately 70 of these agreements are standard real estate leases while 20 are permits for use or other miscellaneous agreements rather than full property leases (i.e. access to property for temporary uses, cell towers, etc.).

[3] The version of the legislation submitted to the Budget & Finance Committee incorrectly states in Section 4, page 8, line 3, that the Ordinance would authorize the City Administrator to amend leases to forgive rent between April 2020 and December 2020. The City Administrator plans to request the Ordinance be amended in Committee to indicate January 2021 to June 2021.

Supervisors for a public purpose. As rent forgiveness would lower the rent required by the lease below market rent, the proposed legislation approves forgiveness of all rent due between January to June 2021 for three specified leases.

The proposed legislation would approve lease amendments to forgive rent for three City tenants, totaling $200,067.60, as set out in Exhibit 1 below.

Exhibit 1: City Tenants to Receive Rent Forgiveness, Previous Rent Forgiveness, and Outstanding Rent Amounts, April 2020 to June 2021

Tenant (Property Address)	**Previously Forgiven Rent** (Apr – Dec 2020)	**Outstanding Rent** (Jan – Jun 2021)	***Monthly Rent*** *(as of Jan 2021)*	**Months of Rent Outstanding**
New Asia Restaurant (772 Pacific Ave.)	$202,500.00	$135,000.00	*$22,500.00*	6
New Conservatory Theater Center (25 Van Ness Ave.)	$33,214.78	$50,067.50	*$8,344.60*	6
Stephen M. Paoli (11th St. & Natoma St.)	$22,500.00	$15,000.00	*$2,500.00*	6
Total	**$257,723.92**	**$200,067.60**	***$33,344.60***	-

Source: Real Estate Division

Two of the three properties are interim uses pending final development into affordable housing (772 Pacific Avenue), and a public park (11th Street and Natoma Street).

A short summary of the status of each of these properties is provided below.

New Asia Restaurant (772 Pacific Avenue)

The Mayor's Office of Housing and Community Development acquired 772 Pacific Avenue on June 28, 2017 for the development of new affordable housing. Chinatown Community Development Center and Catholic Charities were selected to develop the site in May 2021 following a Request for Proposals. Currently, predevelopment is expected to start in fall 2022 and continue through summer 2024 followed by 18 months for construction and expected opening in FY 2025-26. The site is expected to provide around 70 affordable housing units for seniors.

As part of the acquisition, the City was assigned a lease with the existing restaurant tenant, New Asia Restaurant. The Restaurant has been closed to indoor dining since March 2020 under local health orders and is unable to provide outdoor seating. However, the Restaurant has been operating as a food market during the pandemic. New Asia Restaurant has been unable to make any rent payments since April 2020 and previously received rent forgiveness of $202,500 for rent due from April to December 2020. Currently, the Restaurant owes $270,000 in outstanding rent from January to December 2021, the rent forgiveness requested would cover unpaid rent from January to June 2021 only (i.e. $135,000). Real Estate and MOHCD were unable to confirm whether the restaurant had applied for or received any government funding to cover negative financial impacts from COVID-19. Real Estate and MOHCD were also unable to confirm the Restaurant's ability to pay outstanding rent due for July to December 2021.

The current lease expired on December 31, 2021 and MOHCD and the Real Estate Division are expected to begin discussions with the tenant in January to discuss whether they would like to renew their lease until construction starts in 2024 and whether New Asia would like to relocate to a ground floor commercial space currently planned for the new development. According to Real Estate Division staff, if the lease is renewed, New Asia Restaurant could be entitled to relocation assistance and/or payments during construction under state law.[4]

New Conservatory Theater Center (25 Van Ness)

The City leases the lower level of 25 Van Ness Avenue to the New Conservancy Theater Center (NCTC), an arrangement in place since 1984. The current lease expires on September 30, 2023. The Theater was closed from March 2020 until October 2021 due to local health orders. NCTC secured federal CARES Act funding to pay rent through August 2020. After entering into a rent deferral agreement with the City for rent due from September to December 2020, the Board of Supervisors authorized rent forgiveness of $32,723.92 in April 2021. While NCTC secured $188,705.95 in federal aid and $25,000 in state aid, these monies were only used for salaries. NCTC currently has $50,067.50 in outstanding rent for January to June 2021. No additional rent is outstanding for July to December 2021.

Stephen M Paoli (11th Street & Natoma Street)

The Recreation and Parks Department acquired a building at 11th Street and Natoma Street on May 4, 2018 for development of a public park. According to the Recreation and Parks Department, planning for the project has just begun, with design and community engagement expected from Spring 2022, followed by an anticipated construction start in Summer 2024 and completion by Summer 2025.

As part of the acquisition, the City was assigned several leases on the site, including one with Stephen M Paoli for a "pop-up" restaurant space. According to the Real Estate Division, the restaurant has been closed since March 2020 and Mr. Paoli applied for, but did not receive, federal government assistance to pay for operating costs. The Board previously authorized rent forgiveness of $22,500 for outstanding rent due for April 2020 to December 2020. Mr. Paoli has been unable to reopen since January 2021. The lease expired on September 30, 2021, and converted to a month-to-month lease thereafter. Mr. Paoli discussed with RED terminating the lease due to infeasibility to reopen given reduced foot traffic and costs of reopening, however, as of December 2021, Mr. Paoli has not yet vacated the premises.

Currently, Mr. Paoli owes $22,500 in outstanding rent for January to September 2021. The rent forgiveness requested in this legislation would cover $15,000 of this amount, leaving at least $7,500 in additional rent outstanding. According to Real Estate Division staff, Mr. Paoli would like to continue the lease but would not be able to pay the total aggregate outstanding rent which is $32,500 to date.

[4] See California Government Code Sec. 7260 – 7277.

Waiver of Administrative and Environmental Code Provisions

Administrative and Environmental Code provisions enacted after City leases were executed or amended must be included in any subsequent amendments. According to the proposed legislation, these requirements are being waived because requiring existing tenants to comply with these new requirements could impose additional costs on tenants and impede the intended purpose of providing financial relief.

The Administrative Code requirements being waived may include:

- 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).

The Environment Code provisions being waived may include:

- 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).

FISCAL IMPACT

In total, the proposed legislation is estimated to result in a known reduction in revenues of $200,067.60, of which $50,067.60 are non-dedicated General Fund reductions and $150,000 are dedicated General Fund reductions, as shown in Exhibit 2 below.

Exhibit 2: Estimated Rent Forgiveness Costs and Funds Impacted, April to December 2020

Tenant (Property Address)	Outstanding Rent (Jan – Jun 2021)	Fund Impacted
New Asia Restaurant (772 Pacific Ave.)	$135,000.00	Project Fund (Affordable Housing Project Costs)
New Conservatory Theater Center (25 Van Ness Ave.)	$50,067.60	General Fund
Stephen M. Paoli (11th St. & Natoma St.)	$15,000.00	Project Fund (Park Development Costs)
Total	**$200,067.60**	
Total Non-dedicated General Fund Impact	$50,067.60	
Total Dedicated General Fund Impact	$150,000.00	

Source: Real Estate Division

According to the Mayor's Office of Housing and Community Development, any rental income from the New Asia Restaurant lease at 772 Pacific Avenue is dedicated to covering costs associated with the site, including current operating costs and future predevelopment and development costs. For example, funds were recently used to cover past-due water bills and to resolve a water leak on the property.

According to the Recreation and Parks Department, the rental income from Stephen M. Paoli is deposited in a General Fund Continuing Authority account dedicated to future development of the 11th and Natoma Street site as a public park.

POLICY CONSIDERATION

Additional Outstanding Rent Not Covered by the Ordinance

The proposed ordinance only provides rent forgiveness for rent outstanding from January to June 2021, however, as shown in Exhibit 3 below, two of the tenants that would receive rent forgiveness have an additional $142,500 in unpaid rent for July to December 2021. According to Real Estate Division staff, the City Administrator is only asking for rent forgiveness for January to June 2021 as this is the period covered by the City Administrator's COVID-19 rent deferral program.[5]

As indicated above, the Real Estate Division and MOHCD were unable to confirm whether New Asia Restaurant would be able to repay unpaid rent due from July to December 2021 or whether the tenant would like to continue the lease past the December 31, 2021 expiration. Real Estate Division staff also do not believe Mr. Paoli (11th St & Natoma St.) would be able to repay outstanding rent due after June 2021. We therefore recommend the Board request that the Real Estate Division and MOHCD provide information regarding the outstanding rent not covered by

[5] As originally set out in the March 27, 2020 City Administrator memo cited above.

the proposed ordinance and their plans to recover or request forgiveness for this rent before approving the legislation.

Exhibit 3: Additional Outstanding Rent Not Covered by Rent Forgiveness for City Tenants Referenced in Ordinance, January to December 2021

	Outstanding Rent		
Tenant (Property Address)	**Covered by Ordinance** (Jan – Jun 2021)	**Not Covered by Ordinance** (Jul – Dec 2021)	**Months of Additional Outstanding Rent**
New Asia Restaurant (772 Pacific Ave.)	$135,000	$135,000	6
New Conservatory Theater Center (25 Van Ness Ave.)	$50,067	-	0
Stephen M. Paoli (11th St. & Natoma St.)	$15,000	$7,500*	3*
Total	**$200,067**	**$142,500**	-

Source: Real Estate Division
* Additional rent for the period after the current lease ended (i.e. October to December 2021) may also be due. Real Estate is working on an agreement with Mr. Paoli regarding this outstanding rent but this is conditional on the rent forgiveness requested in the legislation.

Selective and Limited Access to Rent Forgiveness for City Tenants in Need

The proposed legislation provides rent forgiveness for January to December 2021 for the three tenants mentioned above only. While several other City tenants with leases managed by the Real Estate Division missed rent payments during this period, Real Estate Division staff continue to negotiate repayment of this outstanding rent (estimated at approximately $200,271) and has secured other agreements with the remaining tenants. However, it is unclear if rent forgiveness was offered to all tenants with outstanding rent. According to Real Estate Division staff, rent forgiveness is being requested only for tenants which it believes are unable to repay outstanding rent.

Authorization to amend leases to provide for pandemic-related rent forgiveness approved by the Board of Supervisors for Port and Airport commercial tenants made rent forgiveness available for rent due since the start of the pandemic and was generally available to all tenants of those two departments.[6] While these departments have much larger property portfolios, similar principles apply. As noted above, the Real Estate Division intends to provide rent forgiveness to tenants that it has determined are unable to repay outstanding rent, but this determination could be challenged as potentially arbitrary or inconsistent given that no specific criteria have been articulated or publicized.

[6] See File 20-1278 (Authorizing Amendments to Airport Leases for COVID-19 Rent Relief) and File 20-1163 (Authorizing Amendments to Port Leases for COVID-19 Rent Relief).

Waiver of Board Lease Amendment Review and Municipal Code Requirements

The proposed ordinance will waive compliance requirements under the Administrative Code and Environmental Code enacted after the most recent modification of each lease for leases that are amended pursuant to the proposed legislation. Because the proposed ordinance waives Administrative and Environmental Code provisions and Board of Supervisors' approval of lease amendments under Administrative Code Section 23.30 and Charter Section 9.118(c), we consider approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Request that the Real Estate Division and Mayor's Office of Housing and Community Development provide information on the additional outstanding rent not covered by the Ordinance and their plans to recover or request forgiveness for this rent before approving the legislation.

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