

BOARD of SUPERVISORS



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MEMORANDUM

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

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: March 10, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on March 7, 2023.

File No. 230256

Ordinance amending the Administrative Code to delegate Board of Supervisors approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30 to the Real Estate Division and the Mayor's Office of Housing and Community Development to amend certain existing leases regarding residual rent payments and lender protections for 100% affordable housing projects.

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: Erica.Major@sfgov.org.

cc: Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development

1 [Administrative Code - Delegation of Board of Supervisors Authority to Amend Certain Leases
2 for 100% Affordable Housing]

3 **Ordinance amending the Administrative Code to delegate Board of Supervisors**
4 **approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30**
5 **to the Real Estate Division and the Mayor’s Office of Housing and Community**
6 **Development to amend certain existing leases regarding residual rent payments and**
7 **lender protections for 100% affordable housing projects.**

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

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

16 Section 1. Chapter 23 of the Administrative Code is hereby amended by adding
17 Section 23.42, to read as follows:

18 **SEC. 23.42. LEASE AMENDMENTS FOR 100% AFFORDABLE HOUSING.**

19 *(a) As of 2023, the Mayor’s Office of Housing and Community Development (“MOHCD”)*
20 *monitors and regulates approximately 6,200 units of affordable rental housing under long-term ground*
21 *leases between the City and providers of such affordable rental housing. The typical term of a ground*
22 *lease is no less than 55 years and up to 99 years. Older ground leases, particularly those originally*
23 *executed by the former Redevelopment Agency of the City and County of San Francisco, include*
24 *restrictions on surplus cash that constrain the financial dexterity of affordable housing providers and*
25 *are inconsistent with current ground leases and MOHCD’s surplus cash policy. In addition, the*
COVID-19 pandemic caused affordable housing providers to suffer operational deficits, and amending

1 surplus cash requirements under ground leases will provide financial relief to cover such deficits. To
2 maintain affordable housing from time to time, affordable housing providers must also obtain new
3 financing and amend a ground lease to provide standard protections for a new lender. To respond to
4 these limited but pressing circumstances, delegating authority to the Director of MOHCD and the
5 Director of Property to execute certain lease amendments will reduce administrative costs and
6 streamline the City's ability to be responsive to the needs of affordable housing providers.

7 (b) Notwithstanding the requirements of Charter Section 9.118(c) and Administrative Code
8 Section 23.30, the Board of Supervisors authorizes and delegates to the Director of Property, with the
9 recommendation of the Director of the Mayor's Office of Housing and Community Development
10 ("MOHCD"), the authority to enter into and amend existing leases without seeking approval by the
11 Board of Supervisors for the amendment, provided that all the following conditions are met:

12 (1) The lease that MOHCD and the Real Estate Division intend to amend (A) has
13 already been approved by the Board of Supervisors under Charter Section 9.118(c) and Administrative
14 Code Section 23.30, or (B) was assigned to the City pursuant to the dissolution of the former
15 Redevelopment Agency of the City and County of San Francisco under Ordinance No. 215-12 and
16 Resolution No. 11-12;

17 (2) The lease that MOHCD and the Real Estate Division intend to amend is for a
18 multifamily building where 100% of the residential units (not including any units for managers) are
19 restricted to (A) income eligible households where affordability is ensured based on income, and/or (B)
20 permanent housing for homeless or formerly homeless households;

21 (3) The Director of MOHCD, or the Director's designee, determines in writing that (A)
22 the affordable housing provider is suffering financial shortfalls, and/or (B) a refinancing of the
23 affordable housing project's debt is needed for the purpose of preservation or rehabilitation;

24 (4) The Director of MOHCD, or the Director's designee, in consultation with the City
25 Attorney, determines in writing that the amendment to the existing lease is necessary to (A) mitigate the

1 financial shortfalls and to apply MOHCD’s policies on the distribution of remaining operation revenue
2 after payment of operation costs (“Residual Receipts”) under the lease, and/or (B) add requirements
3 related to government funding, and/or (C) provide reasonable protections to a lender to refinance the
4 affordable housing project’s debt;

5 (5) The amendment modifies the lease solely to (1) add, change, or remove terms
6 related to residual rent or distributions of Residual Receipts to allow the affordable housing provider to
7 retain a greater portion of Residual Receipts and require that the Residual Receipts retained by an
8 affordable housing provider shall be used solely for affordable housing purposes within the City;
9 and/or (2) add, change, or remove terms related to reasonable lender protections necessary to
10 refinance an affordable housing project’s debt; and/or (3) add, change, or remove terms related to
11 government funding for the affordable housing project; and/or (4) add, change, or remove any other
12 terms that are relevant to MOHCD’s policies on Residual Receipts; and

13 (6) The amendment does not (A) increase the liability of the City under the lease, or (B)
14 change the duration of the lease, or (C) impose any other new obligations on the City.

15
16 Section 2. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor’s veto of the ordinance.

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21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/
24 KEITH NAGAYAMA
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Delegation of Board of Supervisors Authority to Amend Certain Leases for 100% Affordable Housing]

Ordinance amending the Administrative Code to delegate Board of Supervisors approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30 to the Real Estate Division and the Mayor’s Office of Housing and Community Development to amend certain existing leases regarding residual rent payments and lender protections for 100% affordable housing projects.

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.

Amendments to Current Law

The proposed ordinance would authorize the Director of Property, with the recommendation of the Director of the Mayor’s Office of Housing and Community Development (“MOHCD”), 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 lease is restricted to 100% affordable housing or permanent supportive housing; (b) 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; (c) MOHCD has determined that an affordable housing provider has suffered financial shortfalls and/or needs to refinance its existing debt to maintain the affordable housing; (d) the amendments only add, change, or remove terms related to residual rent or surplus cash distributions to alleviate financial shortfalls, address new government funding, and/or provide reasonable protections to a lender; (e) the amendments do not increase the cost or duration of the lease, or add any liability or obligations to the City; and (f) the amendments meet other conditions in the ordinance.

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