

File No. 230256

Committee Item No. 2

Board Item No. 29

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Transportation

Date: October 2, 2023

Board of Supervisors Meeting:

Date: October 17, 2023

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#### OTHER

- MOHCD Presentation – October 2, 2023
- MOHCD Presentation – April 24, 2023
- Referral FYI to Depts – March 10, 2023
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Prepared by: John Carroll

Date: September 28, 2023

Prepared by: John Carroll

Date: October 13, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

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 delegating Board of Supervisors**  
4 **approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30**  
5 **to the Real Estate Division, and based on the recommendation of the Mayor’s Office of**  
6 **Housing and Community Development (“MOHCD”), to amend certain existing leases**  
7 **regarding residual rent payments and lender protections for 100% affordable housing**  
8 **projects.**

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

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

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

19 **~~SEC. 23.42. LEASE AMENDMENTS FOR 100% AFFORDABLE HOUSING.~~**

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

1 housing providers and are inconsistent with current ground leases and MOHCD's surplus cash policy.  
2 In addition, the COVID-19 pandemic caused affordable housing providers to suffer operational  
3 deficits, and amending surplus cash requirements under ground leases will provide financial relief to  
4 cover such deficits. To maintain affordable housing, -affordable housing providers from time to time  
5 must also obtain new financing and amend a ground lease to provide standard protections for a new  
6 lender. To respond to these limited but pressing circumstances, delegating authority to the Director of  
7 MOHCD and the Director of Property to execute certain lease amendments will reduce administrative  
8 costs and streamline the City's ability to be responsive to the needs of affordable housing providers.

9  
10 Section 2. Delegated Authority to Amend Leases.

11 (a) Notwithstanding the requirements of Charter Section 9.118(c) and Administrative Code  
12 Section 23.30, the Board of Supervisors authorizes and delegates to the Director of Property,  
13 with based on the recommendation of the Director of the Mayor's Office of Housing and Community  
14 Development ("MOHCD"), the authority to enter into and amend the existing leases described in  
15 Section 2(b) of this ordinance without seeking approval by the Board of Supervisors for the  
16 amendment, provided that all the following conditions are met:

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

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

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

4                   (4) The Director of MOHCD, or the Director’s designee, in consultation with the City  
5 Attorney, determines in writing that the amendment to the existing lease is necessary to (A) mitigate the  
6 financial shortfalls and to apply MOHCD’s policies on the distribution of remaining operation revenue  
7 after payment of operation costs (“Residual Receipts”) under the lease, and/or (B) add requirements  
8 related to government funding, and/or (C) provide reasonable protections to a lender to refinance the  
9 affordable housing project’s debt;

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

18                   (6) Other than to modify the lease as authorized under subsection (a)(5) of  
19 Section 2 of this ordinance, ~~T~~the amendment does not (A) materially increase the liability or  
20 obligations of the City under the lease, or (B) change the duration of the lease, or (C) impose any  
21 other new obligations on the City, or (D) materially decrease the benefits to the City with respect  
22 to the property under the lease.

23                   (b) The delegated authority described in Section 2(a) shall apply only to the following  
24 leases:

1           (1) Ground Lease dated June 2, 1999, by and between the Redevelopment  
2 Agency of the City and County of San Francisco, as landlord, and GGA 1820 Post, L.P., a  
3 California limited partnership, as tenant (known as Golden Gate Apartments).

4           (2) Ground Lease dated November 28, 2000, by and between the  
5 Redevelopment Agency of the City and County of San Francisco, as landlord, and Mission  
6 Bay Affordable Housing Limited Partnership, a California limited partnership, as tenant (known  
7 as Rich Sorro Commons).

8           (3) Ground Lease dated December 7, 2000, by and between the  
9 Redevelopment Agency of the City and County of San Francisco, as landlord, and AM  
10 Preservation, L.P., a California limited partnership, as tenant (known as Antonia Manor).

11           (4) Ground Lease dated December 7, 2000, by and between the  
12 Redevelopment Agency of the City and County of San Francisco, as landlord, and MM  
13 Preservation, L.P., a California limited partnership, as tenant (known as Maria Manor).

14           (5) Ground Lease dated June 25, 2002, by and between the Redevelopment  
15 Agency of the City and County of San Francisco, as landlord, and Mercy Housing California  
16 XXII, a California limited partnership, as tenant (known as the Dudley Apartments).

17           (6) Ground Lease dated December 16, 2003, by and between the  
18 Redevelopment Agency of the City and County of San Francisco, as landlord, and Mercy  
19 Housing California XX, a California limited partnership, as tenant (known as Mission Creek  
20 Senior Community).

21           (7) Ground Lease dated March 19, 2004, by and between the Redevelopment  
22 Agency of the City and County of San Francisco, as landlord, and Plaza Apartments  
23 Associates, L.P., a California limited partnership, as tenant (known as Plaza Apartments).

24           (8) Ground Lease dated October 21, 2008, by and between Redevelopment  
25 Agency of the City and County of San Francisco, as landlord, and 365 Fulton L.P., a

1 California limited partnership, as tenant (known as Richardson Apartments or Central  
2 Freeway Parcel G).

3 (9) Ground Lease dated December 6, 2011, by and between Redevelopment  
4 Agency of the City and County of San Francisco, as landlord, and 25 Essex L.P., a California  
5 limited partnership, as tenant (known as Rene Cazenave Apartments).

6 (10) Ground Lease dated November 19, 2013, by and between the Office of  
7 Community Investment and Infrastructure as Successor Agency to the Redevelopment  
8 Agency of the City and County of San Francisco, as landlord, and Carroll Avenue Senior  
9 Homes, L.P., a California limited partnership, as tenant (known as Dr. George W. Davis  
10 Senior Housing).

11 (11) Ground Lease dated December 12, 2013, by and between City and County  
12 of San Francisco, as landlord, and Franciscan Towers Associates, L.P., a California limited  
13 partnership, as tenant (known as Franciscan Towers).

14 (12) Ground Lease dated May 21, 2015, by and between the Office of  
15 Community Investment and Infrastructure as Successor Agency to the Redevelopment  
16 Agency of the City and County of San Francisco, as landlord, and Mission Block 7 Housing  
17 Partners, L.P., a California limited partnership, as tenant (known as 588 Mission Bay  
18 Boulevard North).

19  
20 Section 23. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

22 ///

23 ///

24 ///

25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3 APPROVED AS TO FORM:  
4 DAVID CHIU, City Attorney

5 By: /s/ Keith Nagayama  
6 KEITH NAGAYAMA  
7 Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**  
*(Amended in Committee – October 2, 2023)*

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

**Ordinance delegating Board of Supervisors approval authority under Charter, Section 9.118 and Administrative Code, Section 23.30 to the Real Estate Division, based on the recommendation of Mayor’s Office of Housing and Community Development (“MOHCD”), 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

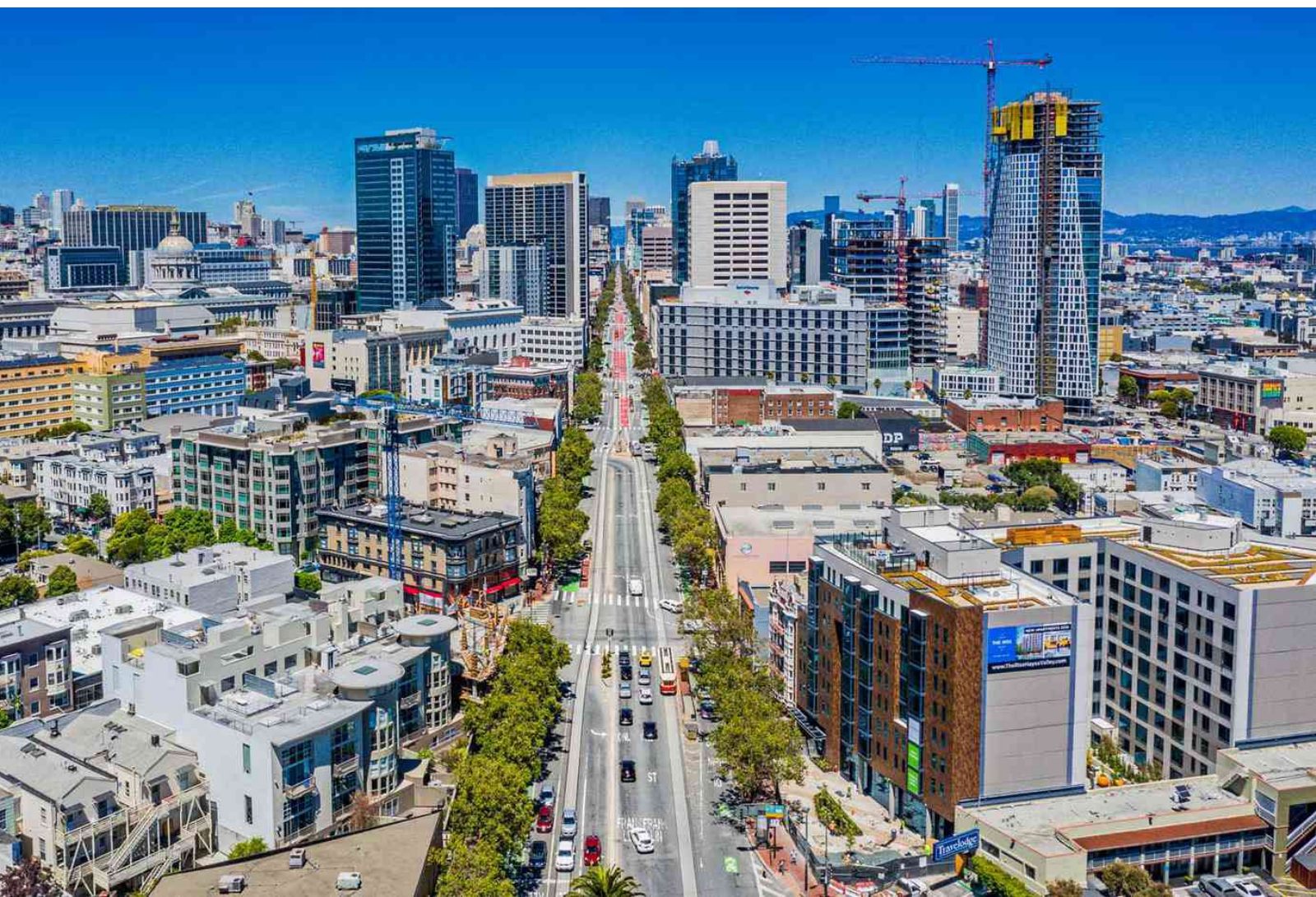
The proposed ordinance would authorize the Director of Property, based on the recommendation of the Director of the Mayor’s Office of Housing and Community Development (“MOHCD”), to amend certain existing leases without seeking approval by the Board of Supervisors for the amendment under Section 9.118(c) 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.

Background Information

This legislative digest reflects amendments introduced in the Land Use and Transportation Committee on October 2, 2023.

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# Delegated Authority for Ground Lease Amendments

LAND USE AND  
TRANSPORTATION  
COMMITTEE

October 2, 2023

JACKIE TSOU, Director of Asset Management  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

- MOHCD manages ground leases for affordable housing on City-owned sites
- Lease terms require long-term affordability and other restrictions that advance the City's affordable housing policy goals and objectives.
- The term of a ground lease is usually 75 years with a 24-year option to extend (99 years total)
- Historically, MOHCD ground leases include provisions for capped residual receipts
  - Limits the share of project cashflow an owner may retain
- Charter Section 9.118 and Admin Code Section 23.30 require that some ground lease amendments must be approved by BOS

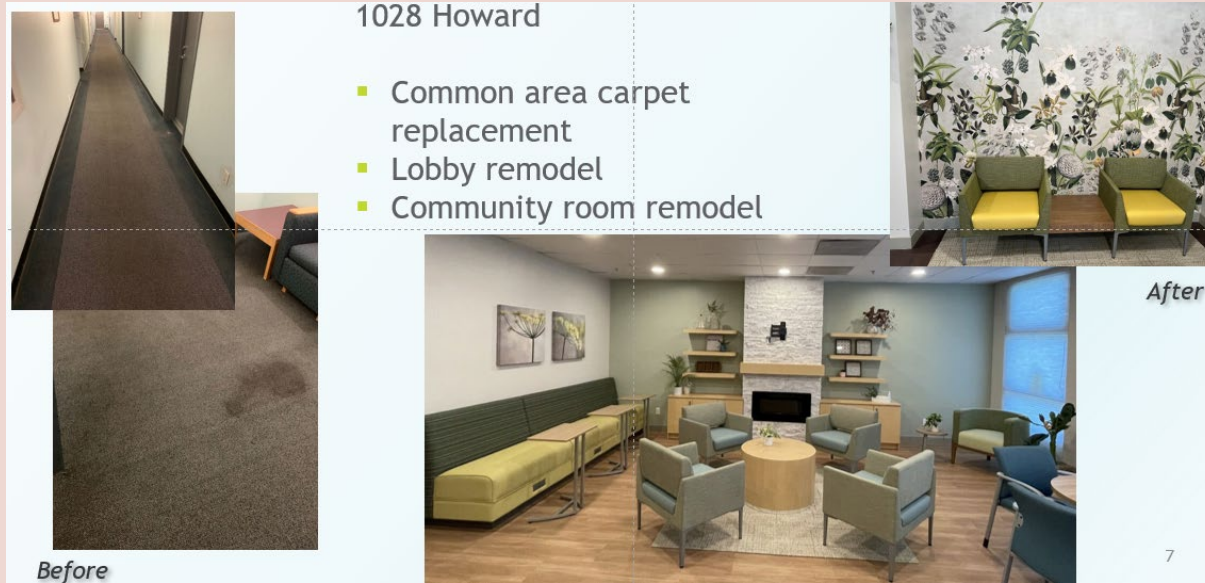
## MOHCD Leases with Affordable Housing Providers

- Older ground leases include restrictions on residual receipts to affordable housing providers that are less favorable than current MOHCD policy
- **Affordable housing providers use residual receipts from cash-rich projects to support the capital repair needs and operational deficits of other affordable housing sites in San Francisco**
- Affordable properties have applied for ground lease amendments to align residual receipts allowances to MOHCD's current policy
- Streamlines administrative processes, saving affordable housing providers and City staff time. (Housing Element mandate to reduce process)

## The Need for Delegated Authority



- Replenished replacement reserves at properties that have capital repair needs
- Made improvements to properties



How have Affordable Housing Providers Used Residual Receipts?

Delegate authority to MOHCD to amend ground leases for 100% affordable buildings or permanent supportive housing that meet the following criteria:

- Lease already approved by the Board or assigned to the City following Redevelopment dissolution
- Lessee is suffering financial shortfalls and/or needs to refinance to maintain the affordable housing
- MOHCD Director, in consultation with the City Attorney's Office, determines that an amendment is necessary to mitigate financial shortfalls and update the leases to reflect current MOHCD Residual Receipts Policy
- The amendment will only add, change, or remove terms related to
  - (1) residual rent or distributions of Residual Receipts to allow the affordable housing provider to retain a greater portion of Residual Receipts; and/or provide reasonable protections to a lender
  - (2) require that any greater portion of Residual Receipts retained by an affordable housing provider as a result of the amendment shall be used solely for affordable housing purposes within the City; and
  - (3) add, change, or remove any other terms that are relevant to MOHCD's policies on Residual Receipts
- Amendment does not increase the liability of the City under the lease, change the duration of the lease, or impose any other new obligations on the City
- Amendment aligns with current MOHCD Residual Receipts policy or lender protections to Director of Property, with recommendation from MOHCD, as approved by the Citywide Affordable Housing Loan Committee

## Proposed Legislation

- Only the 12 affordable housing sites with ground leases that had applied for ground lease amendments in 2020/2021 included in the proposed legislation

	District	Neighborhood	Sponsor
Golden Gate Apartments	5	Japantown	CCDC
Antonia Manor	5	Tenderloin	TNDC
Maria Manor	5	Tenderloin	TNDC
Rich Sorro Commons	6	Mission Bay	MHDC
The Dudley	6	SOMA	Mercy
Mission Creek Senior Community	6	Mission Bay	Mercy
Plaza Apartments	6	SOMA	TNDC
Richardson Apartments (Parcel G)	5	Hayes Valley	HomeRise
Rene Cazenave Apts (Transbay Block 11A)	6	Financial District/South Beach	HomeRise
Dr. George W Davis Senior Housing	10	Bayview	McCormack Baron Salazar/BHP Multi Senior Svcs
Franciscan Towers	5	Tenderloin	TNDC
588 MBN (Mission Bay South Block 7 West)	9	Mission Bay	Related/CCDC
Sierra Madre	5	Tenderloin	TNDC
Turk & Eddy Apartments	5	Tenderloin	TNDC

## Changes to the Proposed Legislation

- Technical amendment that would apply to small subset of ground lease amendments
- Amendments related to changes to annual rent, terms, etc. for the identified 12 ground leases would continue to come back to Board of Supervisors for approval
- No change to approvals of new ground leases

Board of Supervisors will Continue to Approve all other Ground Leases

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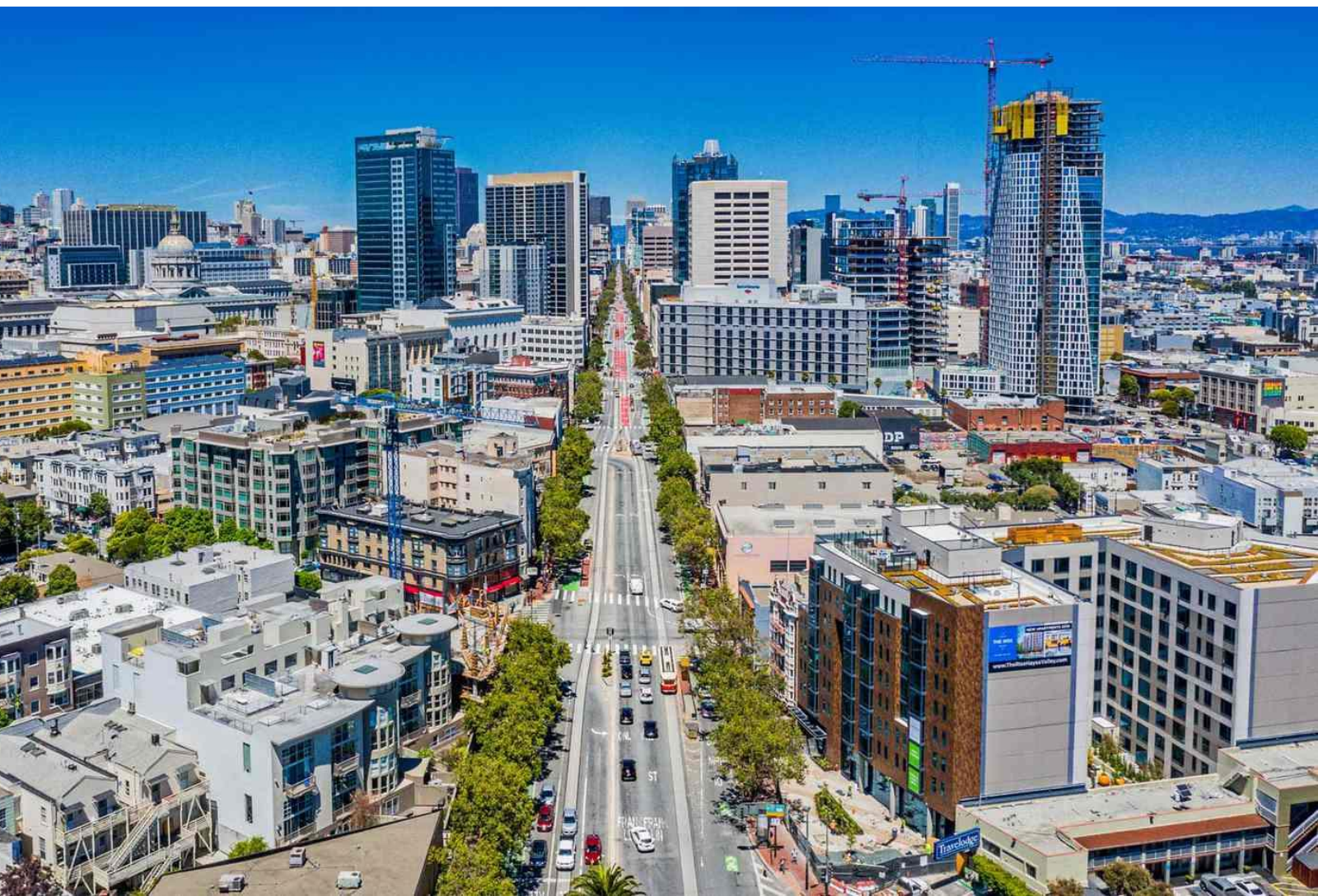
Thank you



Jackie Tsou  
Director of Asset Management  
[Jackie.Tsu@sfgov.org](mailto:Jackie.Tsu@sfgov.org)

Sheila Nickolopoulos  
Director of Policy and Legislative Affairs  
[Sheila.Nickolopoulos@sfgov.org](mailto:Sheila.Nickolopoulos@sfgov.org)





# Delegated Authority for Ground Lease Amendments

LAND USE AND  
TRANSPORTATION  
COMMITTEE

APRIL 24, 2023

JACKIE TSOU, Director of Asset Management  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

- MOHCD manages 125+ ground leases for affordable housing on City-owned sites
- Lease terms require long-term affordability and other restrictions that advance the City's affordable housing policy goals and objectives.
- The term of a ground lease is usually 75 years with a 24-year option to extend (99 years total)
- Historically, MOHCD ground leases include provisions for capped residual receipts
  - Limits the share of project cashflow an owner may retain
- Charter Section 9.118 and Admin Code Section 23.30 require that some ground lease amendments must be approved by BOS

## MOHCD Leases with Affordable Housing Providers

- Affordable housing providers suffered operational deficits during the pandemic and are continuing to experience operational challenges with increasing costs (insurance, staffing, utilities)
- Older ground leases include restrictions on residual receipts to affordable housing providers that are less favorable than current MOHCD policy
- 14 affordable properties have applied for ground lease amendments to align residual receipts allowances to MOHCD's current policy

***Residual Receipts:***  
*Project Income minus  
Project Expenses and  
allowable payments  
(i.e., debt service, and  
approved fees)*

## The Need for Delegated Authority

# Ground Leases Requiring Amendments

	District	Neighborhood	Sponsor
Antonia Manor	5	Tenderloin	TNDC
Franciscan Towers	5	Tenderloin	TNDC
Golden Gate Apartments	5	Japantown	CCDC
Maria Manor	5	Tenderloin	TNDC
Richardson Apartments (Parcel G)	5	Hayes Valley	HomeRise
Sierra Madre	5	Tenderloin	TNDC
Turk & Eddy Apartments	5	Tenderloin	TNDC
Mission Creek Senior Community	6	Mission Bay	Mercy
Plaza Apartments	6	SOMA	TNDC
Rene Cazenave Apts (Transbay Block 11A)	6	Financial District/South Beach	HomeRise
Rich Sorro Commons	6	Mission Bay	MHDC
The Dudley	6	SOMA	Mercy
588 MBN (Mission Bay South Block 7 West)	9	Mission Bay	Related/CCDC
Dr. George W Davis Senior Housing	10	Bayview	McCormack Baron Salazar/BHP Multi Senior Svcs

Delegate authority to MOHCD to amend ground leases for 100% affordable buildings or permanent supportive housing that meet the following criteria:

- Lease already approved by the Board or assigned to the City following Redevelopment dissolution
- Lessee is suffering financial shortfalls and/or needs to refinance to maintain the affordable housing
- MOHCD Director, in consultation with the City Attorney's Office, determines that an amendment is necessary to mitigate financial shortfalls and update the leases to reflect current MOHCD Residual Receipts Policy
- The amendment will only add, change, or remove terms related to
  - (1) residual rent or distributions of Residual Receipts to allow the affordable housing provider to retain a greater portion of Residual Receipts; and/or provide reasonable protections to a lender
  - (2) require that any greater portion of Residual Receipts retained by an affordable housing provider as a result of the amendment shall be used solely for affordable housing purposes within the City; and
  - (3) add, change, or remove any other terms that are relevant to MOHCD's policies on Residual Receipts
- Amendment does not increase the liability of the City under the lease, change the duration of the lease, or impose any other new obligations on the City
- Amendment aligns with current MOHCD Residual Receipts policy or lender protections to Director of Property, with recommendation from MOHCD, as approved by the Citywide Affordable Housing Loan Committee



- Reduce process time to modernize these outdated leases
- Simplifies the process of standardizing leases across lease portfolio
- Residual receipt clause allows affordable housing providers additional, flexible financial resources to support their portfolio needs within San Francisco
- Housing Element mandate to reduce process

Impact on Affordable Housing

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# Thank you



Jackie Tsou  
Director of Asset Management  
[Jackie.Tsu@sfgov.org](mailto:Jackie.Tsu@sfgov.org)

Sheila Nickolopoulos  
Director of Policy and Legislative Affairs  
[Sheila.Nickolopoulos@sfgov.org](mailto:Sheila.Nickolopoulos@sfgov.org)

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

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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