

AMENDED IN COMMITTEE
6/24/2020

FILE NO. 200517

ORDINANCE NO.

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

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

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

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

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

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

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

5 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
6 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, Order No. C19-
7 07c on April 29, 2020, ~~and~~ Order No. C19-07d on May 17, 2020, and Order No. C19-07e on
8 May 22, 2020, and updated on June 11, 2020, directing San Franciscans to stay safe in their
9 homes. These Orders generally require individuals to stay in their homes without a specific
10 expiration date, until it is extended, rescinded, superseded, or amended in writing by the
11 Health Officer, and require businesses to cease or modify all non-essential operations at
12 physical locations in the City.

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14 Section 2. Findings and Purpose.

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

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

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

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

25

1 (e) Charter Section 9.118(c) and Administrative Code Section 23.30 require the Board
2 of Supervisors by resolution to review and approve certain types of long-term leases and
3 some amendments to those leases. But with some limitations, the Board may delegate
4 authority to departments in certain specific circumstances to enter into leases or amendments
5 that would otherwise require approval under Section 9.118(c). And the Board of Supervisors
6 by ordinance may waive the application of Administrative Code Section 23.30 in particular
7 circumstances.

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

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

22 23 Section 3. Delegation of Authority to Amend Existing Leases.

24 Notwithstanding the requirements of Charter Section 9.118(c) and Administrative Code
25 Section 23.30, MOHCD and the Real Estate Division may amend existing leases without

1 seeking approval by the Board of Supervisors for the amendment, provided that all the
2 following conditions are met:

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

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

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

14 (d) The amendment modifies the lease solely to (1) add, change, or remove terms
15 related to (1) residual rent or distributions of Surplus Cash to allow the affordable housing
16 provider to retain a greater portion of Surplus Cash, including, but not limited to, amounts
17 reported in the 2019 annual monitoring report; and (2) require that any greater portion of
18 Surplus Cash retained by an affordable housing provider as a result of the amendment shall
19 be used solely for affordable housing purposes within the City; and (3) add, change, or
20 remove any other terms that are relevant to MOHCD policies on Surplus Cash; and

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

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

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1 Notwithstanding the requirements of Administrative Code Sections 120.2(b) and
2 120.4(b), MOHCD may amend existing agreements and policies or waive certain
3 requirements in such agreements and policies without seeking review by the Citywide
4 Affordable Housing Loan Committee for the amendment, provided that all the following
5 conditions are met:

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

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

13 (c) The amendment modifies the agreement or policy solely to (1) add, change, or
14 remove terms related to residual rent or distributions of ~~s~~Surplus ~~e~~Cash to allow an affordable
15 housing provider to retain a greater portion of Surplus Cash, including, but not limited to,
16 amounts reported in the 2019 annual monitoring report; ~~and~~ (2) require that any greater
17 portion of Surplus Cash retained by an affordable housing provider as a result of the
18 amendment shall be used solely for affordable housing purposes within the City; and (3) add,
19 change, or remove any other terms that are relevant to current MOHCD policies on Surplus
20 Cash; and

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

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24 Section 5. Transmittal to the Clerk of the Board.
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1 MOHCD shall submit a copy of any lease amendment executed under the delegated
2 authority of Section 3 of this ordinance to the Clerk of the Board of Supervisors within 30 days
3 of execution of the lease amendment.

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5 Section 6. Effective Date; Expiration.

6 Consistent with Charter Section 2.107, this emergency ordinance shall become
7 effective immediately upon enactment, and shall expire on the 61st day following enactment
8 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the
9 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
10 ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the
11 ordinance.

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13 Section 7. Supermajority Vote Required.

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

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17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: /s/
20 KEITH NAGAYAMA
21 Deputy City Attorney
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