

1 [Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]
 2
 3 **Ordinance authorizing the City Administrator to amend certain leases and forgive rent**
 4 **due between April 2020 and December 2020 with nonresidential tenants, and waiving**
 5 **Administrative Code and Environmental Code requirements enacted after the most**
 6 **recent modification of each lease, in order to allow for expeditious rent forgiveness**
 7 **necessitated by the financial hardship caused by the public health emergency related**
 8 **to the COVID-19 pandemic; authorizing the City Administrator to further amend leases**
 9 **and forgive rent due between January 2021 and June 2021, and waiving Administrative**
 10 **Code and Environmental Code requirements enacted after the most recent modification**
 11 **of each lease, without further Board of Supervisors approval under Charter,**
 12 **Section 9.118, and Administrative Code, Chapter 23.**

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 font*.
 15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 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. Findings and Purpose.

22 (a) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
 23 response to the spread of the novel coronavirus 2019 or COVID19. On March 3, 2020, the
 24 Board of Supervisors concurred in the February 25th Proclamation and in the actions taken by
 25 the Mayor to meet the emergency.

///

1 (b) To mitigate the spread of COVID19, on March 16, 2020, the Local Health Officer
2 issued Order No. C19-07 generally requiring individuals to stay in their homes (“Shelter in
3 Place”), and requiring businesses to cease many non-essential operations at physical
4 locations in the City and County of San Francisco. The Health Officer’s Order continues to be
5 updated and revised to address public health issues presented by the pandemic. The Health
6 Order, as amended, still does not allow for certain businesses to resume normal operations at
7 this time or for the foreseeable future.

8 (c) The COVID-19 pandemic has caused, and will likely continue to cause, abrupt
9 and serious impacts on the local economy, on the operations of local businesses and
10 nonprofit organizations, and on the job security of employees. Many of the affected
11 businesses and other entities, including City Administrator Office’s Real Estate Division
12 tenants, are experiencing significant operating deficits and hardships in paying rent for a
13 variety of reasons, including reductions in income due to lower customer demand, required
14 closures, or limits on full-scale operations. Many of these entities face unprecedented
15 challenges to remain financially solvent during the public health emergency. These difficulties
16 cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut
17 due to the reduced customer demand or required closures or limitations on full-scale
18 operations.

19 (d) The City Administrator’s Office, Real Estate Division, leases space in City
20 owned buildings to dozens of tenants for a variety of business and recreational uses. In
21 response to the severe economic impacts on these tenants, on March 27, 2020, the City
22 Administrator issued a Memorandum, “City Policy Regarding Enforcement of Certain Tenant
23 Lease Obligations by City Departments from March 17, 2020 through April 30, 2020
24 (“Policy)”, which was updated on June 1, 2020 to extend the Policy through December 31,
25 2020, allowing City departments to (i) waive all late charges, default interest and associated

1 penalties and fees for any delinquent rent payments that were or are due for use of City
2 property within San Francisco City limits due to the impact of COVID-19, (ii) provide
3 resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent
4 arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

5 (e) The City Administrator has determined that rent forgiveness, not just rent
6 deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses
7 and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide
8 the City with much needed entertainment, art, culture and small business services and
9 materials. Unlike rent deferral, which changes the timing of rent payments that are due under
10 a lease but does not change the lease terms, rent forgiveness reduces or eliminates rent
11 payments that are due.

12 (f) Administrative Code Section 23, and Charter Section 9.118, requires the Board
13 of Supervisors to review and approve certain leases and amendments to those leases. A
14 change in the rent amount, including rent forgiveness, would require Board of Supervisors
15 approval under subsection (c) of Charter Section 9.118 and section 23.30 of Chapter 23.

16 (g) The City has over the years adopted a number of Administrative Code and
17 Environment Code ordinances the requirements of which must be included in new leases or
18 amendments of existing leases entered by City agencies. To require tenants to comply with
19 certain ordinances enacted after execution of the tenant's lease or, if applicable, the most
20 recent amendment of the lease, as a condition of entering into a new lease or a lease
21 amendment to qualify for rent forgiveness, would likely impose costs that further impede a
22 tenant's survival and frustrate the purpose of providing relief to ensure a tenant's ability to
23 sustain operations through this challenging period.

24 (h) By waiving the requirement of Board of Supervisors approval of future lease
25 amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and

1 also waiving Administrative Code and Environment Code requirements, if any, imposed on
2 leases and lease amendments when said requirements were enacted after execution of the
3 tenant’s lease, or if applicable, most recent lease amendment, this ordinance will increase the
4 chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid
5 the cascade of negative impacts to the City, the tenant and the tenant’s employees, if rent
6 forgiveness is denied or delayed.

7 Section 2. Definitions.

8 For the purposes of this ordinance:

9 “Administrative Code and Environment Code Requirements” shall mean the
10 requirements of those Codes that are required to be included in Leases. These requirements
11 include the following provisions of the Administrative Code: Section 4.1-3 (All-Gender Toilet
12 Facilities); Section 4.9-1© (Vending Machines; Nutritional Standards and Calorie Labeling
13 Requirements; Offerings); Section 4.20 (Tobacco Product And Alcoholic Beverage Advertising
14 Prohibition); Chapters 12B and 12C (Nondiscrimination in Contracts and Property Contracts);
15 Section 12F (MacBride Principles—Northern Ireland); Chapter 12K (Salary History); Chapter
16 12Q (Health Care Accountability); Chapter 12T (Criminal History in Hiring and Employment
17 Decisions); Chapter 21C (Miscellaneous Prevailing Wage Requirements); Sections 23.50-
18 23.56 (Labor Representation Procedures In Hotel And Restaurant Developments); Section
19 23.61 (Prevailing Wage and Apprenticeship Requirements and Local Hire Requirements); and
20 Sections 83.1 et seq. (First Source Hiring Program).

21 Further, these requirements include the following provisions of the Environment Code:
22 Chapter 3 (Restrictions on Use of Pesticides); Sections 802(b) and 803(b) (Tropical Hardwood
23 and Virgin Redwood Ban); Chapter 13 (Preservative-Treated Wood Containing Arsenic); and
24 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance). The listing in the two
25 preceding sentences of specific requirements in the Administrative Code and Environment

1 Code is not necessarily an exhaustive list; this definition of “Administrative Code and
2 Environment Code Requirements” is intended to include all requirements of those Codes that
3 are required to be included in Leases.

4 “CARES Act” means the federal Coronavirus Aid, Relief, and Economic Security Act
5 enacted on March 27, 2020.

6 “Lease” means a lease or other means of granting a right to occupy or use real
7 property, and shall also include a license, permit to enter, use permit, or other similar
8 instrument.

9 “Payroll Costs” shall have the same meaning as “payroll costs” under the CARES Act.
10 Section 3. Leases.

11 (a) New Asia Restaurant.

12 (1) On or about June 28, 2017, the City and County of San Francisco,
13 Mayor’s Office of Housing and Community Development, purchased 772 Pacific
14 Avenue for development of affordable housing.

15 (2) At that time, the City was assigned the existing lease for the New Asia
16 Restaurant located on the ground floor. The New Asia Restaurant is one of the few
17 banquet locations in the District and has been a staple in the area for almost two
18 decades. It leases the space for \$22,500 per month and its lease expires December
19 31, 2021.

20 (3) The New Asia Restaurant has been closed since the middle of March
21 2020 and has accepted a rent deferral plan and will owe the City \$202,500 as of
22 December 2020. However, with the continued Health Orders requiring closure and/or
23 limited seating/outdoor seating (which is physically impossible at this location), the New
24 Asia Restaurant has basically been closed since the pandemic commenced and with

25 ///

1 difficulties in continuing to employ its 200 employees, believes it will remain closed for
2 the foreseeable future.

3 (b) New Conservatory Theatre Center.

4 (1) The Real Estate Division currently leases the Lower Level of 25 Van
5 Ness Avenue (Assessor's Parcel No. 0834, Lot No. 004), in the City and County of San
6 Francisco, to The New Conservatory Theatre Center, a California non-profit corporation
7 ("NCTC" or "Tenant"), who has been leasing the lower level of 25 Van Ness and
8 providing quality live entertainment since 1984.

9 (2) On October 20, 2018, the Mayor and Board of Supervisors approved
10 Resolution No. 327-18, on file with the Clerk of the Board of Supervisors in File No.
11 180769, extending the Lease through September 30, 2023.

12 (3) Having received funds from the federal CARES Act, NCTC has been able
13 to pay rent since March 2020 through August 2020 during the pandemic and was in
14 compliance with its Lease and all lease provisions until September 1, 2020, when the
15 Director of Property granted a rent deferral per the City Administrator's March 27, 2020
16 memorandum.

17 (4) NCTC has been closed since March 2020 due to the Health Orders and
18 remains closed at this time and for the foreseeable future. It will owe the City
19 \$32,723.92 as of December 2020.

20 (5) A term of NCTC's Rent Deferral Agreement is that should it receive
21 further federal aid for rent from the CARES Act or similar legislation, it will commence
22 rent payments immediately to the extent and amount received even if it remains closed
23 due to the City's Health Orders.

24 ///

25 ///

1 (c) Historic United States Mint Lease.

2 (1) On March 31, 2017, the City and the California Historical Society (“CHS”)
3 entered into an Exclusive Negotiation Agreement for CHS to serve as the City’s “Lead
4 Community Partner” for Phase I Due Diligence component of the Old Mint Restoration
5 Project, which is expected to cost upwards of \$120 million.

6 (2) During the analysis, inspections, testing, and refurbishment, the City
7 desired to activate the space to prevent continued deterioration, encampments, and
8 vandalism, as well as, support community events in the signature space. After a
9 request for proposals/bids process, NPU, Inc., a California corporation, (an event
10 planning and venue management company) was awarded a lease commencing March
11 1, 2020 and terminates in February 2022 excluding options. The City receives a base
12 rent of \$22,000 per month and fifty percent of all venue rental fees and \$2,500 per
13 ticketed event.

14 (3) Due to the Health Orders, NPU has been unable to host or schedule any
15 events at the Old Mint since March 2020. In addition, all pre-scheduled events have
16 been postponed or cancelled through December 2020 for a loss of approximately
17 \$192,000 in anticipated participation rent and approximately \$198,000 in base rent to
18 the City as of December 2020.

19 (4) The tenant applied for but did not receive any federal funds to assist with
20 rent payments or employees’ wages. The owners of the company have used their
21 personal savings to assist in continuing to pay their employees and to remain in
22 business.

23 (d) Pop-Up Restaurant - Stephen M. Paoli.

24 (1) On May 4, 2018, the City purchased a building at 11th Street and Natoma
25 ultimately for recreation and park purposes.

1 (2) The City was assigned several existing leases including a ground floor
2 lease with Stephen M. Paoli that operates a “pop-up” restaurant. The lease terminates
3 in June 2021.

4 (3) Mr. Paoli’s business has been closed since March 2020. He has one
5 employee in addition to himself. This business is his only source of income. He
6 applied for federal funds, grants and loans to help pay his rent and employee but he did
7 not receive anything.

8 (4) He pays \$2,500 per month in rent and will owe \$22,500 as of December
9 2020.

10 Section 4. Amendment of Existing Leases to Forgive Rent; Waiver of Requirements for
11 Board of Supervisors Approval Under Chapter 23 and Charter Section 9.118; Waiver of
12 Administrative Code and Environment Code Requirements.

13 The above-mentioned leases are hereby amended and rent forgiven in the amounts set
14 forth below for the period of April 2020 through December 2020:

15	New Asia Restaurant	\$202,500.00
16	New Conservatory Theatre Center	\$ 32,723.92
17	Old Mint	\$198,000.00
18	Paoli	\$ 22,500.00
19	TOTAL	\$455,723.92

20
21 The City Administrator through the Director of Property may further amend these
22 leases, and other existing Real Estate Division managed leases, without approval of the
23 amendment by the Board of Supervisors under Charter Section 9.118 (c) or Chapter 23,
24 section 23.30, and without modifying the Lease to include Administrative Code and
25 ///

1 Environment Code Requirements that were enacted since the most recent modification to
2 their Lease, provided that all of the following conditions are satisfied:

3 (a) The Lease has already been approved by the Board of Supervisors under Chapter
4 23 if required;

5 (b) The Lease amendment, which must be in the appropriate standardized form
6 amendment without exception and without negotiation, and modifies the Lease only to forgive
7 some or all of the rent owed during the time period between January 1, 2021 and June 30,
8 2021;

9 (c) The Tenant must be in compliance with all other existing lease provisions;

10 (d) Rent may be forgiven during the time period of January 2021 up to June 30, 2021,
11 at the discretion of the City Administrator and this ordinance does not mandate that the City
12 amend the Lease, grant any further rent forgiveness, or require the City Administrator or
13 Director of Property to take any other action;

14 (e) Each tenant must disclose information regarding all monies received from any
15 government-funded financial aid, grant or loan program intended for rent, including CARES
16 Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will
17 be deducted from any forgiveness amount;

18 (f) The parties will release each other from claims for rent forgiven under any
19 amendment;

20 (g) Tenant's failure to comply with the Lease or the amendment will result in
21 termination of rent forgiveness as of the date of default;

22 (h) The amendment does not waive, suspend, or modify any other revision or
23 obligation of either party under the existing Lease; and

24 ///

25 ///

1 (i) Tenant must comply with all applicable laws including all “back to work”
2 requirements and other workforce-related ordinances, orders, and laws relating to the COVID-
3 19 pandemic, including those addressing workplace safety and employment rights.

4 Section 5. Effective Date.

5 This ordinance shall become effective 30 days after enactment. Enactment occurs
6 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
7 sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the
8 Mayor’s veto of the ordinance.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: /s/ CHARLES SULLIVAN
13 CHARLES SULLIVAN
14 Deputy City Attorney

15 n:\spec\as2020\9690013\01500526.docx