

File No. 210001

Committee Item No. 1

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Committee

Date April 7, 2021

Board of Supervisors Meeting

Date \_\_\_\_\_

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Completed by: Linda Wong Date April 2, 2021

Completed by: Linda Wong Date \_\_\_\_\_

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 25<sup>th</sup> Proclamation and in the actions taken by  
25 the Mayor to meet the emergency.

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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

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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.

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1 (c) Pop-Up Restaurant - Stephen M. Paoli.

2 (1) On May 4, 2018, the City purchased a building at 11<sup>th</sup> Street and Natoma  
3 ultimately for recreation and park purposes.

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

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

11 (4) He pays \$2,500 per month in rent and will owe \$22,500 as of December  
12 2020.

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

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

18	New Asia Restaurant	\$202,500.00
19	New Conservatory Theatre Center	\$ 32,723.92
20	Paoli	\$ 22,500.00
21	TOTAL	\$257,723.92

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

1 and 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  
4 Chapter 23 if required;

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

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

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

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

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

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

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

23 ///

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

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**REVISED LEGISLATIVE DIGEST**

(Substituted, 3/23/2021)

[Amendments to Real Property Leases - Forgive Tenant Rent During COVID-19 Pandemic]

**Ordinance authorizing the City Administrator to amend certain leases and forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic; authorizing the City Administrator to further amend leases and forgive rent due between January 2021 and June 2021, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, without further Board of Supervisors approval under Charter, Section 9.118, and Administrative Code, Chapter 23.**

Existing Law

Charter Section 9.118 and Administrative Code Chapter 23 require the Board of Supervisors to review and approve certain types of leases and lease amendments.

In light of the significant adverse impacts of the COVID-19 pandemic on nonresidential tenants, the City Administrator waived fees, penalties and interest for delinquent rent payments that were due for use of City property, but required payment of any rent arrearages by June 30, 2021. The City Administrator has now determined that rent forgiveness, not just rent deferral, is necessary to maintain rent revenues in the long-term, facilitate at-risk businesses and nonprofit corporations to reopen when the Health Orders allow, and to continue to provide the City with much needed entertainment, art, culture and small business services and materials.

The City's Administrative and Environment Codes requires departments to include specific terms in lease agreements. When departments amend leases, departments generally are required to incorporate Code changes that were enacted after the initial lease execution.

Amendments to Current Law

This ordinance allows the Director of Property to amend the following four leases to forgive rent for the period of April 2020 through December 2020: (1) New Asia Restaurant (\$202,500); (2) New Conservatory Theatre Center (\$32,723); and (3) Paoli (\$22,500). This ordinance would permit the amendment of these leases, and other leases under the control of the City Administrator, to forgive rent for the period January 2021 to June 30, 2021 subject to certain conditions, but without approval of the amendment by the Board of Supervisors under Charter Section 9.118 or Administrative Code Chapter 23, and without modifying the leases to update Administrative or Environment Codes requirements.

**FILE NO. 210001**

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<b>Item 1</b> <b>File 21-0001</b>	<b>Department:</b> City Administrator (ADM)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would allow the Director of Property to (1) amend three leases to forgive rent due between April 2020 through December 2020, totaling \$258,215, without adding Administrative and Environmental Code provisions enacted since these leases were last executed, and (2) amend the leases specified as well as other Real Estate Division managed leases meeting certain conditions to allow Real Estate to provide rent forgiveness for rent due between January 2021 and June 2021, without Board of Supervisors approval.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• 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. The City Administrator now believes that rent forgiveness, not just rent deferral, is needed for three City tenant businesses and non-profits: (1) New Asia Restaurant, (2) New Conservatory Theater Center, and (3) Stephen M. Paoli.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The proposed legislation would result in a known reduction in revenues of \$258,215, of which \$33,215 are non-dedicated General Fund reductions and \$225,000 are dedicated General Fund reductions.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance is not intended to apply to the 33 leases under Real Estate’s jurisdiction but that are managed by other General Fund departments, including rent collection.</li> <li>• Unlike similar legislation for rent forgiveness for Port and Recreation and Park tenants, the proposed legislation does not require a determination that the tenant was unable to pay rent due to COVID-19 related impacts.</li> <li>• Real Estate continues to negotiate repayment of outstanding rent for seven other tenants (estimated at approximately \$161,295) or amendments to leases to collect same. According to Real Estate, the remaining tenants who have unpaid rent declined rent forgiveness.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ol style="list-style-type: none"> <li>1. Amend the proposed ordinance to add the following language (a) to Section 4, page 7, line 23, after “City Administrator,” “for which the Real Estate Division collects rent,” and (b) at page 8, line 10, after “at the discretion of the City Administrator” “, on the condition that a tenant’s inability to pay rent is due to negative financial impacts from the COVID-19 pandemic.”</li> <li>2. Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.</li> </ol>	

## 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 into without Board approval, per Section 23.31.

## BACKGROUND

On March 27, 2020,<sup>1</sup> 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.

The City Administrator now believes that rent forgiveness, not just rent deferral, is needed to facilitate the reopening and preservation of three City tenant businesses and non-profits. Specifically, the City’s Real Estate Division (“Real Estate”) has identified that rent forgiveness is needed for three City tenants with past due rent between April 2020 and December 2020, totaling \$258,214.78<sup>2</sup> and may be needed in the future for rent due by these same three and other tenants between January 2021 and June 2021.

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<sup>1</sup> The memo was subsequently updated on June 1, 2020 to extend protections to December 31, 2020.

<sup>2</sup> The total rent forgiveness amount differs from the total in the legislation (\$257,723.92) by \$490.86 as the amount used in the legislation does not include an annual rent increase for the National Conservatory Theater Center that went into effect in October 2020.

According to data provided by Real Estate, there are nine other City tenants who have missed rent payments due between April 2020 and December 2020, totaling approximately \$189,942.<sup>3</sup> Real Estate has already reached a rent repayment agreement for five of these,<sup>4</sup> discussions are ongoing with two tenants, and two tenants left. The tenants include private retail or food service firms, a small professional services business, and a non-profit business.

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

According to Chapter 23 of 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 Real Estate.<sup>5</sup> 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 authorizes the Director of Property to (1) amend three specified leases to forgive rent due between April 2020 through December 2020, totaling \$258,214.78, without adding Administrative and Environmental Code provisions enacted since these leases were last executed, and (2) amend the leases specified as well as other Real Estate Division managed leases meeting certain conditions to allow Real Estate to provide rent forgiveness for rent due between January 2021 and June 2021, without Board of Supervisors approval.

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<sup>3</sup> In addition to the tenants noted above, according to Real Estate, the current tenant for the Bill Graham Civic Auditorium has not paid rent since April 2020 (approximately \$236,391 in base rent), however, Real Estate has facilitated agreements with other City Departments to use this space in lieu of paying rent. The Bill Graham Civic Auditorium tenant did not charge the City use fees for the COVID-19 response use and the Elections use during 2020, which Real Estate states was of equal value to the unpaid rent. In particular, the Auditorium was used by the Department of Public Health for COVID-19 response functions and by the Elections Department for the November 2020 General Elections. In addition, the current tenant of the Old U.S. Mint, NPU, Inc., has \$198,000 in unpaid rent for the period from April 2020 to December 2020. Real Estate is still negotiating possible rent deferral or a rent waiver with NPU, Inc.

<sup>4</sup> Of the three tenants with agreements, one had a rent deferral/ repayment agreement, one tenant was transferred to the Municipal Transportation Agency's jurisdiction, and the third lease was terminated with agreement from the tenant.

<sup>5</sup> 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.).

**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).

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

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 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 April and December 2020 for three specified leases, and waives Board approval for future forgiveness of rent due

between January and June 2021 for leases that meet certain conditions detailed in the ordinance and discussed below.

**City Tenants to Receive Rent Forgiveness Immediately**

The proposed legislation would approve lease amendments to forgive rent for three City tenants, totaling \$258,214.78 as set out in Exhibit 1.

**Exhibit 1: City Tenants to Receive Rent Forgiveness Immediately and Outstanding Rent Amounts, April to December 2020**

Tenant (Property Address)	Outstanding Rent (Apr - Dec 2020)	Monthly Rent (as of Jan 2021)	Months of Rent Outstanding
New Asia Restaurant (772 Pacific Ave.)	\$202,500.00	\$22,500.00	9
New Conservatory Theater Center (25 Van Ness Ave.)	\$33,214.78	\$8,344.60	4
Stephen M. Paoli (11th St. & Natoma St.)	\$22,500.00	\$2,500.00	9
<b>Total**</b>	<b>\$257,723.92</b>	<b>\$33,344.60</b>	-

Source: Real Estate Division  
 \* Total Outstanding Rent for New Conservatory Theater Center is slightly less than 4 months of rent at \$8,344.60 x4 because the rent for that tenant increased from \$8,181 to \$8,345 in October 2020.  
 \*\* The total rent forgiveness amount differs from the total in the legislation (\$455,723.92) by \$490.86 as the amount used in the legislation does not include an annual rent increase for the National Conservatory Theater Center that went into effect in October 2020.

Two of the three properties are interim uses pending final development into affordable housing (772 Pacific Avenue), and a public park (11<sup>th</sup> 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. A Request for Proposals (RFP) for development of the site is currently open for proposals and predevelopment is expected to continue through FY 2021-22 with expected opening in FY 2024-25. 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. Real Estate was unable to confirm whether the restaurant had applied for or received any government funding to cover negative financial impacts from COVID-19. The current lease is due to expire on December 31, 2021.

New Conservatory Theater Center (25 Van Ness)

The City leases the lower level of 25 Van Ness Avenue to the New Conservancy Theater Center, an arrangement in place since 1984. The current lease expires on September 30, 2023. The Theater has been closed since March 2020 due to local health orders but secured federal CARES

Act funding to pay rent through August 2020. The Theater entered into a rent deferral agreement with the City in September 2020 for rent due through December 2020, per the City Administrator's initial policy. The Theater currently owes \$33,214.78 in outstanding rent for September to December 2020 and is not expected to open for the foreseeable future.

*Stephen M Paoli (11<sup>th</sup> Street & Natoma Street)*

The Recreation and Parks Department acquired a building at 11<sup>th</sup> 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 is expected to start this spring/ summer with an anticipated construction start in FY 2023-24 and completion in FY 2024-25.

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. There is currently \$22,500 in outstanding rent due for April 2020 to December 2020. The current lease is due to expire on September 30, 2021.

***Criteria for Additional City Tenants to be Eligible for Rent Forgiveness***

The proposed legislation allows the City Administrator, at her discretion, to provide rent forgiveness to the three tenants that are the subject of the proposed legislation as well as other Real Estate-managed City tenants for rent due between January 1, 2021 and June 30, 2021 if they meet the following conditions:

- 1) Tenant has a lease previously approved by the Board of Supervisors under Chapter 23 of the Administrative Code, if required,
- 2) Tenant is in compliance with all other lease provisions,
- 3) Tenant must disclose information regarding any funds received from any government-funded financial aid, grant, or loan program intended for rent and these funds will be deducted from rent forgiveness provided,
- 4) Tenant must comply with all other lease provisions, comply with "back to work" requirements and other work-force related ordinances and applicable COVID-19 laws relating to workplace safety and employment rights.

The proposed ordinance is not intended to apply to the 33 leases under Real Estate's jurisdiction that are managed by other General Fund departments, including rent collection. We therefore recommend amending the legislation to clarify that the authority to amend leases only applies to leases for which Real Estate collects rent.

**FISCAL IMPACT**

In total, the proposed legislation is estimated to result in a known reduction in revenues of \$258,214.78, of which \$33,214.78 are non-dedicated General Fund reductions and \$225,000 are dedicated General Fund reductions, as shown in Exhibit 2.

However, the legislation also provides authority for the City Administrator, at her discretion, subject to the conditions outlined in the ordinance, to provide rent forgiveness for rent due between January 2021 and June 2021 for the three specified tenants and other Real Estate-managed lease tenants. Based on data from Real Estate, this could cost an additional \$72,209 per month, or up to \$433,254 over the six-month period for the three specified tenants and an additional five tenants currently behind on rent.<sup>6</sup> While it is unlikely this full amount will be necessary given new federal funding now available and the reopening of some outdoor dining, additional rent forgiveness may still be needed as several of the tenants specified were not approved for Paycheck Protection Program loans in the first round of the program and cannot provide outdoor dining.

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

<b>Tenant (Property Address)</b>	<b>Outstanding Rent (Apr 2020 - Dec 2020)</b>	<b>Fund Impacted</b>
New Asia Restaurant (772 Pacific Ave.)	\$202,500.00	Project Fund (AH Project Costs)
New Conservatory Theater Center (25 Van Ness Ave.)	\$33,214.78	General Fund
Stephen M. Paoli (11th St. & Natoma St.)	\$22,500.00	Project Fund (Park Development Costs)
<b>Total</b>	<b>\$258,214.78</b>	
Total General Fund Impact	\$33,214.78	
Total Project Fund Impact	\$225,000.00	

*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 11<sup>th</sup> and Natoma Street site as a public park.

<sup>6</sup> Estimated based on data from the Real Estate Division which shows \$55,344.60 per month due in rent among the four specified tenants as of January 2021 and an additional \$16,864.77 per month due in rent among five additional Real Estate-managed tenants behind on rent for the period April to December 2020. The latter also includes rent for a non-profit City tenant that has been behind on rent since before the pandemic.

**POLICY CONSIDERATION****Program Design Considerations***Selective and Limited Access to Rent Forgiveness for City Tenants in Need*

The proposed legislation provides rent forgiveness for the April 2020 to December 2020 period for the three tenants mentioned above. Rent forgiveness for other tenants would only be available for rent due between January 2021 and June 2021. While several other City tenants missed rent between April 2020 and December 2020, Real Estate continues to negotiate repayment of this outstanding rent (estimated at approximately \$161,295) or amendments to leases to collect same. According to Real Estate, the remaining tenants who have unpaid rent declined rent forgiveness.

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.<sup>7</sup> While these departments have much larger property portfolios, similar principles apply. As noted above, Real Estate intends to provide rent forgiveness to tenants that it has determined are unable to repay unpaid rent.

*Rent Forgiveness Not Explicitly Tied to Negative Impacts related to the COVID-19 Pandemic*

Unlike the legislation authorizing amendments to Port leases related to its rent forgiveness program, the proposed legislation does not require a determination or evidence that the tenant was unable to pay rent due to COVID-19 related impacts.<sup>8</sup> Pending legislation to authorize amendments to Recreation & Parks Department leases (File 21-0029) also requires demonstrated negative impact related to the COVID-19 pandemic to be eligible. We therefore recommend amending the proposed ordinance to add a requirement in Section 4 that future rent forgiveness be conditioned on a tenant's inability to pay rent due to negative financial impacts from the COVID-19 pandemic.

**Waiver of Board Lease Amendment Review and Municipal Code Requirements**

The proposed ordinance will approve the amendment of three leases and waive the Board of Supervisors' approval of lease amendments for an unspecified number of leases managed by Real Estate. It will also 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

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<sup>7</sup> 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).

<sup>8</sup> The Board also approved legislation authorizing amendments to leases with Airport tenants to allow for rent forgiveness which did not require a demonstration of COVID-19 impact to be eligible. However, given the direct link between the COVID-19 pandemic and air passenger traffic, the risk of funds not targeting affected businesses was relatively small.

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

3. Amend the proposed ordinance to add the following language (a) to Section 4, page 7, line 23, after “City Administrator,” “for which the Real Estate Division collects rent,” and (b) at page 8, line 10, after “at the discretion of the City Administrator” “, on the condition that a tenant’s inability to pay rent is due to negative financial impacts from the COVID-19 pandemic.”
4. Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.



# OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor  
Naomi M. Kelly, City Administrator

## MEMORANDUM

**TO:** All City agencies and tenants

**FROM:** Naomi M. Kelly   
City Administrator

**CC:** Matt Hansen, Director of Risk Management  
Andrico Penick, Director of Property

**SUBJECT:** City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through April 30, 2020 (“Policy”)

**DATE:** March 27, 2020

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### Background

The policy described below (this “Policy”) is prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Two of the most impactful developments for the City’s economy over the last two weeks include the March 16 Order by Mayor London Breed instituting shelter-in-place requirements to slow the spread of the disease and the March 17 Order by Mayor Breed declaring a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the “Eviction Moratorium Order”).

Many City agencies lease space to private tenants for a variety of business and recreational uses. In keeping with the spirit of the broad moratorium under the Eviction Moratorium Order, the City now wishes to issue further guidance so that affected tenants can have confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to retain employees and remain viable to the maximum extent possible. This Policy is directive to all General Fund agencies with private tenants (each, a “City Landlord Agency”). Mayor Breed encourages City enterprise agencies with private tenants to pursue similar tenant relief actions as appropriate to their respective portfolios.

It is important to note that this Policy is a baseline for Citywide action regarding leases within the geographic boundaries of San Francisco. Individual agencies may target additional relief policies beyond these terms (including but not limited to extended payment dates and relief for those classes of tenant otherwise excepted below) based on each agency's mission and the financial situation of each agency in relation to their respective tenant portfolios. Every business saved will help the City's recovery when the spread of the disease is curbed enough to allow the economy to regain its footing.

## **Policy**

### **1. Summary:**

Under this Policy, to the extent not otherwise prevented by law or the City's own obligations to its lenders, trustees, bond holders and/or taxing agencies, City Landlord Agencies are directed to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property for commercial purposes within San Francisco city limits during the period of March 17 through April 30, 2020 due to the impact of COVID-19. City Landlord Agency staff are also directed to follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect.

### **2. Lease Obligations and Payment Provisions:**

The relief offered by this Policy is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations, percentage rent reporting obligations and obligations to pay taxes). Subject to any extension of these deadlines and/or additional relief targeted by individual City Landlord Agencies as noted in sections 3 and 4 below, this Policy requires tenant's resumption of normal timely rent payments on May 1, 2020 and payment of any rent arrearages (including for March and April 2020) in full no later than June 30, 2020. Any amounts not paid in full as of June 30, 2020 (or such later date as set forth under any subsequent relief program approved by the tenant's City Landlord Agency) would then be subject to interest and penalties from and after that date.

The forbearance program outlined in this Policy does not change the terms or conditions of any lease or other agreement. Further, this policy will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

### **3. Agency Action:**

The City has a range of agencies that lease property to private entities, and these agencies have differing authority for leasing property. City Landlord Agencies are directed to take all actions necessary to implement this Policy, to the extent further action is needed.

4. **Further Tenant Relief:**

This Policy is intended as a temporary emergency measure to provide clarity to the City's tenants. Each City Landlord Agency will monitor the performance of its tenants during this time and will determine whether in and in what form it should offer additional tenant relief in light of public health and safety developments.

5. **Other Sources of Relief:**

All departments are directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

6. **Eligibility:**

This Policy applies to all leases, licenses and other agreements to use City land located within the geographic boundaries of San Francisco under the jurisdiction of a City Landlord Agency. This Policy does not apply to MOUs among City departments, vessel berthing agreements and permits to enter where access to the property was not interrupted by the permittor. In any scenario where a tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the City's tenant has offered equivalent relief to the subtenant(s).



# OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor  
Naomi M. Kelly, City Administrator

## MEMORANDUM

**TO:** All City agencies and tenants

**FROM:** Naomi M. Kelly  
City Administrator 

**CC:** Matt Hansen, Director of Risk Management  
Andrico Penick, Director of Property

**SUBJECT:** City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments From March 17, 2020 through December 31, 2020 (“Policy”)

**DATE:** June 1, 2020

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This memorandum updates and replaces the memorandum of March 27, 2020 regarding enforcement of certain tenant lease obligations by extending the Policy through December 31, 2020.

### **Background**

The policy described below (this “Policy”) is prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Two of the most impactful developments for the City’s economy over the last few months include the issuance and extensions of the March 16 Order by the Local Health Officer instituting shelter-in-place requirements to slow the spread of the disease, and the March 18 Order by Mayor Breed declaring a 30-day moratorium on commercial evictions related to financial impacts caused by COVID-19 for small and medium-sized businesses that have less than \$25 million in annual gross receipts (the “Eviction Moratorium Order”).

Many City agencies lease space to private tenants for a variety of business and recreational uses. In keeping with the spirit of the broad moratorium under the Eviction Moratorium Order, the City now wishes to issue further guidance so that affected tenants can have confidence in being able to retain their leasehold while they use their financial reserves on immediately pressing operational needs to retain employees and remain viable to the maximum extent possible. This Policy is directive to all General Fund agencies with private tenants (each, a “City Landlord Agency”). Mayor Breed encourages City enterprise agencies with private tenants to pursue similar tenant relief actions as appropriate to their respective portfolios.

It is important to note that this Policy is a baseline for Citywide action regarding City leases within the geographic boundaries of San Francisco. Individual agencies may target additional relief policies beyond these terms (including but not limited to extended payment dates and relief for those classes of tenant otherwise excepted below) based on each agency's mission and the financial situation of each agency in relation to their respective tenant portfolios. Every business saved will help the City's recovery when the spread of the disease is curbed enough to allow the economy to regain its footing.

## **Policy**

### **1. Summary:**

Under this updated Policy, to the extent not otherwise prevented by law or the City's own obligations to its lenders, trustees, bond holders and/or taxing agencies, City Landlord Agencies are directed to waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property for commercial purposes within San Francisco city limits during the period of March 17 through December 31, 2020 due to the impact of COVID-19. City Landlord Agency staff are also directed to follow the policies and timeframes set forth in the Eviction Moratorium Order with respect to the initiation of any default enforcement or eviction process due to the failure to pay rent owed under any commercial lease due to the impact of COVID-19 while the Eviction Moratorium Order is in effect.

### **2. Lease Obligations and Payment Provisions:**

The relief offered by this updated Policy is contingent upon the tenant's continued compliance with all lease obligations other than the payment of rent (such as maintenance and repair obligations, percentage rent reporting obligations and obligations to pay taxes). Subject to any extension of these deadlines and/or additional relief targeted by individual City Landlord Agencies as noted in sections 3 and 4 below, this Policy requires tenant's resumption of normal timely rent payments on January 1, 2021 and payment of any rent arrearages in full no later than June 30, 2021. Any amounts not paid in full as of June 30, 2021 (or such later date as set forth under any subsequent relief program approved by the tenant's City Landlord Agency) would then be subject to interest and penalties from and after that date.

The forbearance program outlined in this Policy does not change the terms or conditions of any lease or other agreement. Further, this policy will not affect ongoing lease enforcement actions or lease enforcement actions for defaults not related to the current emergency. For any tenant claiming the benefit of force majeure or similar provisions in its lease, those provisions will control.

### **3. Agency Action:**

The City has a range of agencies that lease property to private entities, and these agencies have differing authority for leasing property. City Landlord Agencies are directed to take all actions necessary to implement this Policy, to the extent further action is needed.

4. **Further Tenant Relief:**

This Policy is intended as a temporary emergency measure to provide clarity to the City's tenants. Each City Landlord Agency will monitor the performance of its tenants during this time and will determine whether in and in what form it should offer additional tenant relief in light of public health and safety developments.

5. **Other Sources of Relief:**

All departments are directed to work with the Risk Manager to document and seek recovery from any possible private or public insurance program or other assistance that is forthcoming in the ongoing response to this situation. Tenants have been and should continue to be encouraged to investigate any coverage available to them under any business interruption or similar policies or programs along with public assistance efforts.

6. **Eligibility:**

This Policy applies to all leases, licenses and other agreements to use City land located within the geographic boundaries of San Francisco under the jurisdiction of a City Landlord Agency. This Policy does not apply to MOUs among City departments, vessel berthing agreements and permits to enter where access to the property was not interrupted by the permittor. In any scenario where a tenant has subleased some or all of its space, including master tenants, such relief will only be available to the extent that the City's tenant has offered equivalent relief to the subtenant(s).



London Breed, Mayor  
Naomi M. Kelly, City Administrator



Andrico Q. Penick  
Director of Real Estate

December 18, 2020

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Subject: Amendments to Real Property Leases – Forgive Tenant Rent During COVID-19 Pandemic

Dear Board Members:

Attached for your consideration is an Ordinance approving and authorizing amendments to certain leases (set forth below) to forgive rent due between April 2020 and December 2020 with nonresidential tenants, and waiving Administrative Code and Environmental Code requirements enacted after the most recent modification of each lease, in order to allow for expeditious rent forgiveness necessitated by the financial hardship caused by the public health emergency related to the COVID-19 pandemic.

### **Background**

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

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

The COVID-19 pandemic has caused, and will likely continue to cause, abrupt and serious impacts on the local economy, on the operations of local businesses and nonprofit organizations, and on the job security of employees. Many of the affected businesses and other entities, including City Administrator Office’s Real Estate Division tenants, are experiencing significant operating deficits and hardships in paying rent for a variety of reasons, including reductions in income due to lower customer

demand, required closures, or limits on full-scale operations. Many of these entities face unprecedented challenges to remain financially solvent during the public health emergency. These difficulties cascade beyond the operators to their employees, whose jobs may be eliminated or hours cut due to the reduced customer demand or required closures or limitations on full-scale operations.

The City Administrator's Office, Real Estate Division, leases space in City owned buildings to dozens of tenants for a variety of business and recreational uses. In response to the severe economic impacts on these tenants, on March 27, 2020, the City Administrator issued a Memorandum, "City Policy Regarding Enforcement of Certain Tenant Lease Obligations by City Departments from March 17, 2020 through April 30, 2020 ("Policy")", which was updated on June 1, 2020 to extend the Policy through December 31, 2020, allowing City departments to (i) waive all late charges, default interest and associated penalties and fees for any delinquent rent payments that were or are due for use of City property within San Francisco City limits due to the impact of COVID-19, (ii) provide resumption of normal timely rent payments on January 1, 2021, and (iii) payment of any rent arrearages (including March 2020 – December 2020) in full no later than June 30, 2021.

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

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

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

By waiving the requirement of Board of Supervisors approval of future lease amendments regarding rent forgiveness between January 1, 2021 through June 30, 2021 and also waiving Administrative Code and Environment Code requirements, if any, imposed on leases and lease amendments when said requirements were enacted after execution of the tenant's lease, or if applicable, most recent lease amendment, this ordinance will increase the chances that a tenant will be able to effectively sustain operations or reopen, thereby avoid the cascade of negative impacts to the City, the tenant and the tenant's employees, if rent forgiveness is denied or delayed.

**Leases**

The leases at issue are:

Rent to be forgiven as set forth below for the period of April - December 2020:

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

(a) **New Asia Restaurant**

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

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

(iii) The New Asia Restaurant has been closed since the middle of March 2020 and has accepted a rent deferral plan and will owe the City \$202,500 as of December 2020. However, with the continued Health Orders requiring closure and/or limited seating/outdoor seating (which is physically impossible at this location), the New Asia Restaurant has basically been closed since the pandemic commenced and with difficulties in continuing to employ its 200 employees, believes it will remain closed for the foreseeable future.

(b) **New Conservatory Theatre Center**

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

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

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

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

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

(c) **Historic United States Mint Lease**

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

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

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

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

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

(i) On May 4, 2018, the City purchased a building at 11<sup>th</sup> Street and Natoma ultimately for recreation and park purposes.

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

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

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

## Ordinance

The Ordinance provides for the rent forgiveness to the above-mentioned leases and in the above-mentioned amounts for the time period of April through December 2020.

The Ordinance also provides that the City Administrator through the Director of Property may further amend these leases, and other existing Real Estate Division managed leases, without approval of the amendment by the Board of Supervisors under Charter Section 9.118 (c) or Chapter 23, section 23.30, and without modifying the Lease to include Administrative Code and Environment Code Requirements that were enacted since the most recent modification to their Lease, provided that all of the following conditions are satisfied:

- (a) The Lease has already been approved by the Board of Supervisors under Chapter 23 if required;
- (b) The Lease amendment modifies the Lease only to forgive some or all of the rent owed during the time period between January 1, 2021 and June 30, 2021;
- (b) The Tenant must be in compliance with all other existing lease provisions;
- (c) Rent may be forgiven during the time period of January 2021 up to June 30, 2021, and this ordinance does not mandate that the City amend the Lease, grant any further rent forgiveness, or require the City Administrator or Director of Property to take any other action;
- (d) Each tenant must disclose information regarding all monies received from any government-funded financial aid, grant or loan program intended for rent, including CARES Act and similar federal, state, or local aid; such funds are not eligible for forgiveness and will be deducted from any forgiveness amount;
- (e) The parties will release each other from claims for rent forgiven under any amendment;
- (f) Tenant's failure to comply with the Lease or the amendment will result in termination of rent forgiveness as of the date of default;
- (g) The amendment does not waive, suspend, or modify any other revision or obligation of either party under the existing Lease; and
- (h) Tenant must comply with all applicable laws including all "back to work" requirements and other workforce-related ordinances, orders, and laws relating to the COVID-19 pandemic, including those addressing workplace safety and employment rights.

If you have any questions regarding the Ordinance, please contact Claudia Gorham of Real Estate at 415.713.6020 or [Claudia.gorham@sfgov.org](mailto:Claudia.gorham@sfgov.org).

Respectfully,



Andrico Q. Penick  
Director of Property



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 210001

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Sandi Levine	415.361.1555
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	sandi.levine@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Hon So, Inc (California corporation)	<b>TELEPHONE NUMBER</b> 415-391-6666
<b>STREET ADDRESS (including City, State and Zip Code)</b> 772 Pacific Avenue, San Francisco CA, 94133	<b>EMAIL</b> ShirleyLiu8823@yahoo.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210001
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$292,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Became City tenant at close of purchase of 772 Pacific 6/28/17; rent amount for period 7/1/17 through end of lease term 12/31/21 (54 months x \$22,500/month = \$1,215,000); rent amount for period 12/1/20 through 12/31/21 (13 months x \$22,500/month = \$292,500)		

7. COMMENTS
No rent increases during City as LL

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	So	Hon Keung	CEO
2	So	Hon Keung	Board of Directors
3	So	Candy Mei-Yiu	CFO
4	So	Candy Mei-Yiu	Board of Directors
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
---	---------------------------



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 210001

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Claudia J. Gorham	415.554.9871
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> New Conservatory Theater Center, a California non-prof	<b>TELEPHONE NUMBER</b> 415-861-4914
<b>STREET ADDRESS (including City, State and Zip Code)</b> 25 Van Ness Avenue, Lower Level, SF, CA 94102	<b>EMAIL</b> ednctc@gmail.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210001
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$98,171.76		
<b>NATURE OF THE CONTRACT (Please describe)</b> Lease for basement (lower level) of 25 Van Ness Avenue, San Francisco, CA for non-profit theater. Lease was approved on 10/12/2018.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Decker	Ed	Other Principal Officer
2	Malloy	Jeff	Other Principal Officer
3	Berry	David	Other Principal Officer
4	Eugley	Jeff	Other Principal Officer
5	Frank	J. Conrad	Other Principal Officer
6	Hofkin	Leah A.	Other Principal Officer
7	Holgate	Robert	Other Principal Officer
8	kelly	Maurice	Other Principal Officer
9	Lazarus	Eli	Other Principal Officer
10	Mlay	Serenity Siya	Other Principal Officer
11	Nance	Andrew	Other Principal Officer
12	Roux	Renee	Other Principal Officer
13	Smith	Andrew	Other Principal Officer
14	vales	Larry	Other Principal Officer
15	valko	Eric	Other Principal Officer
16	walker	Stephanie	Other Principal Officer
17	Yaros	Chris	Other Principal Officer
18	Zook	Dana	Other Principal Officer
19	Decker	Ed	CEO

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Pence	Brad	CFO
21	Hodgen	Barbara	COO
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**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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Received On:

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Bid/RFP #:

### Notification of Contract Approval

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A Public Document

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#### 1. FILING INFORMATION

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Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Claudia Gorham	415.554.9871
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> NPU Inc., a California corporation	<b>TELEPHONE NUMBER</b> 415-559-8532
<b>STREET ADDRESS (including City, State and Zip Code)</b> 88 5th Sreet, San Francisco, CA 94103	<b>EMAIL</b> jordan@npuevents.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210001
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$264,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Lease of the premises, approved on March, 13, 2020		

7. COMMENTS
Additionally Jordan Langer and Peter Glikshtern are the only owners who have more than 20% interest in the company.

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Langer	Jordan	CEO
2	Langer	Jordan	COO
3	Pizante	Lou	CFO
4	Glikshtern	Peter	Other Principal Officer
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**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

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Received On:

File #: 210001

Bid/RFP #:

### Notification of Contract Approval

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A Public Document

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<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ADM                      RED	claudia.gorham@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> PASKO PARTNERS GENERAL PARTNERSHIP DBA JOINT VENTURE K	<b>TELEPHONE NUMBER</b> 415-571-4082
<b>STREET ADDRESS (including City, State and Zip Code)</b> 121 BARBAREE WAY, TIBURON CA 94920	<b>EMAIL</b> steve@jointventurekitchen.com

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210001
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$30,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Lease for ground floor for "pop-up" restaurant. The purchase agreement (with assignments) was approved 12/8/2017.		

7. COMMENTS
For the lease we were assigned when we purchased 167 11th Street, SF, CA 94103 for RECPARK

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	PAOLI	STEVE	Other Principal Officer
2	SKORO	KRISTINA	Other Principal Officer
3			
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**From:** [Gosiengfiao, Rachel \(ADM\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Gorham, Claudia \(ADM\)](#); [Penick, Andrico](#); [Quetone, Tal \(ADM\)](#)  
**Subject:** Legislative Package - RENT FORGIVENESS  
**Date:** Monday, December 28, 2020 9:10:41 AM  
**Attachments:** [RED Rent Forgiveness Leg Dig Ver1.docx](#)  
[Approval Email from CAT - Rent Forgiveness.msg](#)  
[Rent Forgiveness Legislation 12 27 2020.docx](#)  
[Cvr Ltr Rent Forgiveness AQP 12 18 2020.pdf](#)  
[NCTC 25 Van Ness Form 126f4BOS---Notification of Contract 12 18 2020.pdf](#)  
[New Asia 772 Pacific SFEC Form 126f4BOS---Notification of Contract.pdf](#)  
[Old Mint - NPU - Form 126 12 18 2020.pdf](#)  
[Paoli 167 11st Form 126.pdf](#)  
[Andrico's Approval of Legislation - RENT FORGIVENESS .msg](#)

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Good morning, BOS Legislation:

Please find the attached legislative package relative to the subject matter.

If you have any questions, please contact me and Claudia J. Gorham.

Thank you,

## **Rachel Gosiengfiao**

Executive Assistant

Real Estate Division

25 Van Ness Avenue, Suite 400

San Francisco, CA 94102

415.554.9880 direct | 415.552.9216 fax

[rachel.gosiengfiao@sfgov.org](mailto:rachel.gosiengfiao@sfgov.org)