

# Legacy Business Historic Preservation Fund Rules and Regulations for Rent Stabilization Grants

Version: 5/22/1710/11/2022

## 1. Scope

These rules and regulations apply to Rent Stabilization Grants to Landlords and their Legacy Business tenants, as set forth at Administrative Code Section 2A.243(c). The Office of Small Business (OSB) administers the Legacy Business Historic Preservation Grant program.

The Rent Stabilization Grant is eligible only to Qualified Landlords who lease property to a Registered Legacy Business in the City and County of San Francisco.

## 2. General Qualifications for Landlords

Qualified Landlords must satisfy all of the following criteria:

### (A) No Amounts Owed to City

Landlords must certify that they do not owe any amounts to the City as a result of fines, penalties, interest, assessments, taxes, fees, or any other financial obligations imposed by law, regulation, or contract that were delinquent as of the date of the Landlord's application for a grant.

### (B) Business Registration

Landlords must certify that they have complied with any requirement to register as a business with the Office of the Treasurer and Tax Collector.

### (C) Office of Labor Standards Enforcement Investigations

Landlords must certify that they are not the subject of an OLSE investigation or enforcement action.

(D) Landlord and Legacy Business Legal Relationship

The Landlord must not be related by ownership either directly or indirectly, to the Legacy Business to which the Landlord leases property. A Landlord is related by ownership to a Legacy Business if any of the following criteria are satisfied:

1. The Landlord holds any ownership interest in the Legacy Business.
2. The Legacy Business holds any ownership interest in the Landlord.
3. A third-party entity holds an ownership interest in both the Legacy Business and the Landlord.
4. The Landlord holds any beneficial interest in any entity (including, but not limited to, a beneficial interest in a trust) that holds an ownership interest in the Legacy Business.
5. The Legacy Business holds any beneficial interest in any entity (including, but not limited to, a beneficial interest in a trust) that holds an ownership interest in the Landlord.
6. The Landlord, or any person who holds an ownership or beneficial interest in the Landlord, is in an immediately family relationship with any person who holds an ownership or beneficial interest in the Legacy Business.

The phrase “immediate family relationship” includes the relationships between spouses, domestic partners, parents or guardians and children (including step-parents and step-children, or adoptive parents and adoptive children), grandparents and grandchildren, siblings (including step-siblings or adoptive siblings), aunts or uncles and nieces or nephews, great-aunts or great-uncles and grand-nieces or grand-nephews, and first or second cousins. The phrase also includes the relationship with the parent, grandparent, or sibling of one’s spouse or domestic partner, or the spouse or domestic partner of one’s child, grandchild, or sibling.

**3. Categories of Ineligible Landlords**

(A) A Qualified Landlord may not be a department, agency, commission, or other entity within the City and County of San Francisco (including, but not limited to, the Real Estate Division, the Port of San Francisco, or the San Francisco Municipal Transportation Agency).

(B) A Qualified Landlord may not be any other local, state, or federal government; any entity within any other local, state, or federal government; or any special district created by state law (including, but not limited to, the Bay Area Rapid Transit District).

(C) A Qualified Landlord may not have entered into a lease agreement with a Legacy Business that had previously owned the real property that is the subject of that lease agreement.

#### **4. Successors to Qualified Landlords**

Whenever a new Landlord assumes the obligations of a lease that previously qualified the prior Landlord for a grant under Administrative Code Section 2A.243(c), and the new Landlord does not renegotiate or otherwise change the terms and conditions of that lease, the new Landlord shall be eligible to be a Qualified Landlord, and to receive a grant under Administrative Code Section 2A.243(c), without entering into a new lease or lease extension of the kind described in Administrative Code Section 2A.243(c)(1). The new Landlord must still satisfy all other requirements to be a Qualified Landlord and to receive a grant, other than the requirement to enter into a new lease or lease extension.

#### **5. Conditions for Leases**

##### **(A) Options to Renew**

To qualify for a grant under Administrative Code Section 2A.243(c), a Landlord must (on or after January 1, 2016) enter into a lease agreement with a Legacy Business “for a term of at least 10 years,” or “extend the term of the Legacy Business’s existing lease to at least 10 years.” For this purpose, any number of years for which the Legacy Business has an option to renew the lease shall count towards the term of the lease, provided that the option to renew can be exercised at the Legacy Business’s sole discretion.

For example, a five-year lease in which the Legacy Business (at its sole discretion) may extend the lease for an additional five years would qualify a Landlord for a grant under Administrative Code Section 2A.243(c).

##### **(B) Retroactivity**

The grant shall be retroactive to the fiscal year (July through June) in which the Legacy Business was listed on the Legacy Business Registry.

For example, if a Legacy Business was listed on the Legacy Business Registry in November 2018, which is fiscal year 2018-19 (July through June), and the qualifying lease is a new 10-year lease that commenced July 1, 2017, and ends June 30, 2026, the Landlord would be eligible for 9 years’ of grants retroactive to July 1, 2018, the same fiscal year the Legacy Business was listed on the Legacy Business Registry.

(C) Signing of the Lease

The Landlord and Legacy Business must sign the lease and any required addenda before the Landlord applies for a grant under Administrative Code Section 2A.243(c), and the Landlord must submit the executed lease and any required addenda with its grant application.

(D) Disclosure to Legacy Business

Before the Legacy Business signs the lease, the Landlord must inform the Legacy Business, in writing, that the City and County of San Francisco does not guarantee that it will fully fund the Rent Stabilization Account, and does not guarantee that it will award any grant of any amount under Administrative Code Section 2A.243(c).

(E) Special Contingency Provisions in Lease

Administrative Code Section 2A.243(c)(1) provides that a lease between a Landlord and a Legacy Business may include a provision making the lease (or any of portion thereof) contingent upon the Landlord receiving a Rent Stabilization Grant from the City equal to \$4.50 square foot, up to the maximum 5000 square feet per location, of the improvement area in San Francisco lease to a Legacy Business.

Any lease that contains such a contingency provision, however, must also provide:

1. That the contingency provision is void when the Landlord is not awarded the Rent Stabilization Grant because:
  - a. The Landlord has amounts owing to the City as a result of fines, penalties, interest, assessments, taxes, fees, or any other financial obligations imposed by law, regulation, or contract (including, but not limited to, financial penalties or other obligations imposed by the Office of Labor Standards Enforcement) that were delinquent as of the date of application or reapplication; or
  - b. The Landlord does not properly complete or submit a grant application; or
  - c. The Landlord takes any intentional action to disqualify the application from receiving a grant.
  
2. That the Landlord must provide the Legacy Business an option to pay the Landlord an amount equal to the difference between the maximum grant amount and the amount that the Landlord actually receives from the Rent Stabilization Grant program, to allow the lease to remain in effect.

The Landlord must provide the Legacy Business with notice of the Landlord's intent to exercise the contingency provision at least 120 days before exercising the contingency provision.

Additionally, the Landlord must bring the contingency provision to the Legacy Business's attention before the Legacy Business signs the lease. In its grant application, the Landlord must demonstrate to OSB's satisfaction that the Legacy Business acknowledged and understood the contingency provision when the Legacy Business signed the lease.

**(F) Additional Application Certifications**

In submitting an application for a grant under Administrative Code Section 2A.243(c), a Landlord must certify:

- a. The Landlord is aware that the grant is an annual grant and that the Landlord must reapply to receive continued funding.
- b. That any failure to reapply for an annual grant may deprive the Landlord of its status as a Qualified Landlord from "prior years" within the meaning of Administrative Code Section 2A.243(c)(3).
- c. That both the Landlord and Legacy Business understand that the amount of the grant could vary and might be less than \$4.50 per square foot due to funding constraints.
- d. That the Landlord must meet all of the requirements for a grant in order to be awarded the grant.

**6. Advance Payments**

A lease or lease extension that satisfies the criteria for a grant under Administrative Code Section 2A.243(c) shall render a landlord eligible to receive a grant under Section 2A.243(c) as early as the fiscal year in which the lease or lease extension is executed, even if the lease or lease extension does not take effect until a later fiscal year. A Qualified Landlord need not wait for the qualifying lease or lease extension to take effect before applying for or receiving a grant. The maximum allowable time between the Qualified Landlord receiving a grant and the qualifying lease or lease extension taking effect shall be three years. If, however, the Qualified Landlord applies for a grant before the lease or lease extension has taken effect, the landlord must—as a condition of receiving a grant—agree to return the entire amount of the grant in the event that the qualifying lease or lease extension does not take effect, unless the Qualified Landlord shows, to the satisfaction of the Office of Small Business, that the Qualified Landlord is not responsible for the fact that the qualifying lease or lease extension does not take effect.

**7. Advance Payments in Relation to Special Contingency Provisions in Lease**

Administrative Code Section 2A.243(c)(1) provides that a lease between Applicant (landlord) and a Legacy Business may include a provision making the lease (or any of portion thereof) contingent upon Applicant receiving a Rent Stabilization Grant from the City equal to \$4.50 square foot, up

to the maximum 5,000 square feet per location, of the improvement area in San Francisco lease to a Legacy Business. Any lease that contains such a contingency provision, however, must also provide that Applicant must wait for the “Lease Year” versus the “Grant Year” to exercise the contingency provision in the case where Applicant applied for and received a grant when the lease or lease extension was executed (“Grant Year”) even though the lease or lease extension did not take effect until a later fiscal year (“Lease Year”).

#### **8. Lease Cancellations**

A Qualified Landlord must certify that they have not cancelled an existing lease or lease extension with a Legacy Business that was not eligible for a Rent Stabilization Grant and executed a new lease or lease extension that is eligible for a Rent Stabilization Grant for the sole purpose of applying for and receiving a grant. If an existing lease or lease extension that was not eligible for a Rent Stabilization Grant is replaced with a new lease or lease extension that is eligible for a Rent Stabilization Grant, the Qualified Landlord must show, to the satisfaction of the Office of Small Business, that the replacement was not conducted for the sole purpose of applying for and receiving a grant.

#### **9. Authorized Use of Funds**

A grant under Administrative Code Section 2A.243(c) is awarded directly to the Qualified Landlord. The Qualified Landlord and the Legacy Business may agree to use the grant to offset the Legacy Business’s rent, or for any other purpose.

#### **10. Confidentiality**

Whenever an application for a grant under Administrative Code 2A.243(c) is approved, the Office of Small Business shall, to the extent permitted by law, keep confidential all provisions in any lease submitted by a Landlord in connection with the application, except to the extent that OSB relied on the content of any such provisions in deciding to award a grant to the applicant Landlord.

Whenever an application for a grant under Administrative Code 2A.243(c) is denied, or before such an application has been either approved or denied, the OSB shall, to the extent permitted by law, keep confidential the entirety of any lease submitted by the Landlord in connection with the application.

#### **11. Notification of Funding Allocations to Prior Year Qualified Landlords**

On or before ~~July 30~~August 1 of each fiscal year, the Office of Small Business shall notify all Qualified Landlords from the prior fiscal year of the annual grant the Landlord will receive for the current fiscal year when the Qualified Landlord reapplies. The OSB will also notify the Legacy Business of the annual grant amount the Landlord will receive.

## **12. Receipt of Grant Payment**

To be paid, Grantees must become ~~a City Vendor~~Suppliers. The Legacy Business Program Manager ~~shall~~may assist Applicants in completing the registration requirements for becoming City ~~Vendors~~Suppliers, as needed. ~~Applicants who cannot or refuse to become City Vendors will be paid by a contracted third party vendor selected by OSB.~~

## **13. Verification of Information**

The Office of Small Business shall have the authority to verify all information provided by a Landlord in connection with an application for a grant under Administrative Code Section 2A.243(c). Failure of a Landlord to comply with information requests from the OSB, or the provision of false information in connection with an application or in response to such requests, shall result in the denial of a grant application.

## **14. Sanctions for Willful or Material Misrepresentation**

Whenever the Office of Small Business learns that a Landlord who has received a grant under Administrative Code Section 2A.243(c) materially or willfully misrepresented any information in any application for such a grant, OSB may terminate any pending grant to that Landlord, order the Landlord to return any grants previously awarded, or prohibit the Landlord (conditionally or otherwise) from applying for future grants for any period of time.

## **15. Appeals**

Applicants for grants under Administrative Code Section 2A.243(c) may appeal any adverse decision by the Office of Small Business (including the decision to deny a grant application, the decision to terminate or revoke any grant previously approved, or the decision to prohibit a Landlord from applying for a future grant) to the Small Business Commission.

## **16. Changes to These Regulations**

The Small Business Commission may revise these regulations at any time, for any reason. The Commission may, but need not, provide that future revisions of these regulations shall be prospective only, and shall not apply to existing Qualified Landlords. Alternatively, the Commission may require that all Landlords (including existing Qualified Landlords) satisfy any new or revised regulations that the Commission chooses to adopt.