

1 [Modifying collection procedures for the Transit Impact, Housing, Child Care, Park and
2 Inclusionary Housing Fees by transferring responsibility for collection and enforcement to the
3 Treasurer.]

4 **Ordinance (1) amending the Planning Code by amending Sections 139, 313.1, 313.4,**
5 **313.5, 313.6, 313.7, 313.8, 313.9, 313.10, 314.1, 314.4, 314.5, 315.3 and 315.6 to transfer**
6 **collection authority for in lieu fees collected for the Park Fund, the Jobs-Housing**
7 **Linkage Program, Child Care Requirement and the Inclusionary Affordable Housing**
8 **Program from the Controller to the Treasurer and conform collection procedures for**
9 **these fees, and require that funds from the Child Care Capital Fund and the Downtown**
10 **Park Fund be used to fund nexus studies for the Downtown Park Fee and the Child**
11 **Care Fee; and (2) amending the Administrative Code by amending Sections 38.1, 38.3,**
12 **38.4, 38.5, 38.6, 38.8, 38.8.5, 38.9, 38.10, 38.11 and 38.45 to transfer collection of the**
13 **Transit Impact Development Fee from the General Manager of the Public Utilities**
14 **Commission to the Treasurer and conform collection and enforcement procedures for**
15 **the fee.**

16 Note: Additions are *single-underline italics Times New Roman*;
17 deletions are *strikethrough italics Times New Roman*.
18 Board amendment additions are double underlined.
19 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. The San Francisco Planning Code is hereby amended by amending Section
21 139, to read as follows:

22 **Sec. 139. DOWNTOWN PARK SPECIAL FUND.**

23 **(a) Findings and Purposes.** Existing public park facilities located in the
24 downtown office districts are at or approaching capacity utilization by the daytime population
25 in those districts. The need for additional public park and recreation facilities in the downtown

1 districts will increase as the daytime population increases as a result of continued office
2 development in those areas. While the open space requirements imposed on individual office
3 and retail developments address the need for plazas and other local outdoor sitting areas to
4 serve employees and visitors in the districts, such open space cannot provide the same
5 recreational opportunities as a public park. In order to provide the City and County of San
6 Francisco with the financial resources to acquire and develop public park and recreation
7 facilities which will be necessary to serve the burgeoning daytime population in these districts,
8 a Downtown Park Fund shall be established as set forth herein.

9 **(b) Definitions.** For purposes of this Section 139, the following definitions
10 shall apply:

11 (1) “First certificate of occupancy” shall mean either a temporary certificate of
12 occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco
13 Building Code Section 307, whichever is issued first.

14 (2) “Net addition of gross floor area of office use” shall mean gross floor area
15 as defined in Planning Code Section ~~102.8~~ 102.9, to be occupied by, or primarily serving, office
16 use, less the gross floor area in any structure demolished or rehabilitated as part of the
17 proposed office development project which gross floor area was used primarily and
18 continuously for office use and was not accessory to any use other than office use for at least
19 five years prior to the City Planning Department approval of the office development project
20 subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is
21 shorter.

22 (3) “Office development project” shall mean any new construction, addition,
23 extension, conversion or enlargement, or combination thereof, of an existing structure which
24 includes any gross floor area of office use; provided, however, that this term shall not include
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1 an addition to an existing structure which would add gross floor area in an amount less than
2 20 percent of the gross floor area of the existing structure.

3 (4) "Office use" shall mean any structure or portion thereof intended for
4 occupancy by business entities which will primarily provide clerical, professional or business
5 services of the business entity, or which will provide clerical, professional, or business
6 services to other business entities or to the public at that location including, but not limited to,
7 the following services: banking, law, accounting, insurance, management, consulting,
8 technical, and the office functions of manufacturing and warehousing businesses, and
9 ~~excluding space primarily used for, or where the most recent use was primarily for, the display~~
10 ~~of goods, wares, or merchandise, including but not limited to: (1) showrooms, design~~
11 ~~showrooms, and design showcases, (2) space displaying goods, wares, and merchandise~~
12 ~~either as samples or for sale, (3) space in which the occupants negotiate sales transactions,~~
13 ~~(4) display space in buildings that also contain office use, and (5) space actually used for~~
14 ~~display of goods, wares, and merchandise even if intended and primarily suitable for offices.~~
15 Such definition shall include all uses encompassed within the meaning of Planning Code
16 Section 219; provided, however, that the term "office use" shall not include any such use
17 which qualifies as an accessory use, as defined and regulated in Sections 204 through 204.5
18 of this Code.

19 (5) "Retail use" shall mean space within any structure or portion thereof
20 intended or primarily suit- able for occupancy by persons or entities which supply commodities
21 to customers on the premises including, but not limited to, stores, shops, restaurants, bars,
22 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220
23 through 225, and also including all space accessory to such retail use.

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1 (6) “Sponsor” shall mean an applicant seeking approval for construction of an
2 office development project subject to this Section, the applicants' successors and assigns, and any entity
3 which controls or is under common control with the applicant.

4 **(c) Requirements.** These requirements are in addition to any applicable
5 requirements set forth in Section 138. ~~An applicant for a permit to construct an~~ The sponsor of a
6 proposed office development project within the C-3-O, C-3-O (SD), C-3-R, C-3-G or C-3-S Use
7 Districts shall, ~~as a condition of approval prior to issuance of the~~ initial site or building permit
8 certificate of occupancy for the project, pay a fee to the ~~Controller~~ Treasurer of the City and
9 County of San Francisco to be deposited in the Downtown Park Fund, in accordance with the
10 standards set forth in this Section. ~~The initial site or building permit~~ certificate of occupancy for
11 the project shall not be issued without proof of payment of the fee issued by the Treasurer.

12 **(d) Imposition of the Downtown Park Fee.** The amount of the fee shall be \$2
13 per square foot of the net addition of gross floor area of office use to be constructed as set
14 forth in the final approved building or site permit. The amount of the fee shall be reviewed
15 every third year, beginning three years after the effective date of this ordinance, by a joint
16 session of the Recreation and Park Commission and the City Planning Commission. The
17 Commissions shall jointly review the fee to determine whether inflation in land and
18 development costs justifies an increase in the fee, and if they so find, shall recommend an
19 amendment of the fee provisions of this ordinance to the Board of Supervisors.

20 (e) Determination of Amount. (1) Prior to approval by either the Planning
21 Department or the Planning Commission of a building or site permit for a development project subject
22 to this section, the Department shall issue a notice complying with Planning Code Section 306.3 setting
23 forth its initial determination of the net addition of gross floor area of office use subject to this section.

24 (2) Any person may appeal the initial determination by delivering an appeal in
25 writing to the Planning Department within 15 days of the notice. If the initial determination is not

1 appealed within the time allotted, the initial determination shall become a final determination. If the
2 initial determination is appealed, the Planning Commission shall schedule a public hearing prior to the
3 approval of the development project by the Department or the Commission to determine the net
4 addition of gross floor area of office use subject to this ordinance. The public hearing may be
5 scheduled separately or simultaneously with a hearing under Planning Code Sections 306.2, 309(h),
6 313.4, 314.5, 315.3 or a Discretionary Review hearing under San Francisco Municipal Code Part III,
7 Section 26. The Commission shall make a final determination of the net addition of gross floor area of
8 office use subject to this section at the hearing.

9 (3) The Planning Department or the Planning Commission shall set forth the final
10 determination of the net addition of gross floor area of office use subject to this section in the
11 conditions of approval of any building or site permit application. The Planning Department shall
12 notify the Treasurer of the final determination of the net addition of gross floor area of office use
13 subject to this section within 30 days following the date of the final determination. The Planning
14 Department shall also notify the Department of Building Inspection (“DBI”) and the Mayor’s Office of
15 Housing that a development project is subject to this section at the time the Planning Department or the
16 Planning Commission approves the building or site permit for the development project.

17 (4) In the event that the Planning Department or the Planning Commission takes
18 action affecting any development project subject to this section and such action is thereafter modified,
19 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action,
20 the permit application for such development project shall be remanded to the Department or the
21 Commission to determine whether the proposed project has been changed in a manner which affects
22 the calculation of the amount of housing required under this ordinance and, if so, the Department or
23 the Commission shall revise the ~~housing~~ requirement imposed on the permit application in compliance
24 with this section within 60 days following such remand and notify the sponsor in writing of such
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1 revision or that a revision is not required. If the net addition of gross floor area of office use subject to
2 this section is revised, the Commission shall promptly notify the Treasurer of the revision.

3 ~~(e)(f)~~ **Procedure Regarding Temporary Temporary Site or Building Permit of**
4 **Occupancy of Occupancy.** The ~~Planning~~ Department ~~of City Planning~~ shall impose a condition
5 requiring payment of the Downtown Park fee on approval of any office development project a
6 ~~building or site permit application~~ subject to ~~the provisions of~~ this Section, requiring that such fee
7 be paid prior to the issuance of the first ~~certificate of occupancy~~ site or building permit certificate
8 of occupancy for the office development project. Upon the sponsor's payment of the fee in full to
9 the Treasurer and upon the sponsor's request, the Treasurer shall issue a certification that the fee has
10 been paid. The sponsor shall present such certification to ~~the DBI and the Planning Department prior~~
11 to the issuance by DBI of the first ~~site or building permit certificate of occupancy for the~~
12 development project. At the time the ~~City~~ Planning Department or Planning Commission approves
13 an application for a site or building permit to construct an office development project subject to
14 this Section, the ~~Director of City Planning~~ Department shall notify in writing ~~the Superintendent of~~
15 ~~the Bureau of Building Inspection ("Superintendent")~~ DBI and the Treasurer, identifying the office
16 development project. ~~The Superintendent shall provide notice in writing to the Zoning Administrator~~
17 ~~at least five business days prior to issuing the first certificate of occupancy for any office development~~
18 ~~subject to this Section. If the Zoning Administrator notifies the Superintendent within five business~~
19 ~~days that the provisions of this Section have not been complied with, the Superintendent~~ DBI shall deny
20 ~~any and all certificates of occupancy~~ not issue the site or building permit certificate of occupancy
21 without proof of payment of the fee from the Treasurer. ~~If the Zoning Administrator notifies the~~
22 ~~Superintendent that the provisions of this Section have been complied with or fails to respond within~~
23 ~~five business days, a certificate of occupancy shall not be disapproved pursuant to this Section. Any~~
24 ~~failure of the Treasurer, DBI, or the Planning Department to give any notice under this Section shall~~
25 not relieve a sponsor from compliance with this Section. ~~Where DBI inadvertently issues a site or~~

1 building permit without payment of the fee, DBI shall not issue any certificate of occupancy for
2 the project without notification from the Treasurer that the fee required by this Section has
3 been paid. The procedure set forth in this Subsection is not intended to preclude enforcement
4 of the provisions of this section pursuant to any other section of this Code, or other authority
5 under the laws of the State of California.

6 ~~(f)~~(g) **Downtown Park Fund.** There is hereby established a separate fund set
7 aside for a special purpose entitled the Downtown Park Fund ("Fund"). All monies collected by
8 the ~~Controller~~ Treasurer pursuant to this Section shall be deposited in the Fund. All monies
9 deposited in the Fund shall be used solely to acquire and develop public recreation and park
10 facilities for use by the daytime population of the C-3 Use Districts, except that monies from
11 the fund shall be used by the Recreation and Park Commission and the Planning Commission
12 to fund in a timely manner a nexus study to demonstrate the relationship between office
13 development projects and open space as set forth in subsection (a) of this Section. The
14 Controller's Office shall file an annual report with the Board of Supervisors, beginning one
15 year after the effective date of this ordinance, which report shall set forth the amount of money
16 collected in the Fund. The Fund shall be administered jointly by the Recreation and Park
17 Commission and the City Planning Commission. The two Commissions shall conduct
18 business related to their duties under this Section at joint public hearings, which hearings may
19 be initiated by either the Recreation and Park Commission or the City Planning Commission.
20 A joint public hearing shall be held by the Commissions to elicit public comment on proposals
21 for the acquisition of property using monies in the Fund. Notice of any joint public hearings
22 shall be published in an official newspaper at least 20 days prior to the date of the hearing,
23 which notice shall set forth the time, place, and purpose of the hearing. The hearing may be
24 continued to a later date by a majority vote of the members of both Commissions present at
25 the hearing. At a joint public hearing, a quorum of the membership of both Commissions may

1 vote to allocate the monies in the Fund for acquisition of property for park use and/or for
2 development of property for park use. The Recreation and Park Commission shall alone
3 administer the development of the recreational and park facilities on any acquired property
4 designated for park use by the Board of Supervisors, using such monies as have been
5 allocated for that purpose at a joint hearing of both Commissions.

6 (h) Collection of Fee; Interest; Lien. (1) The Downtown Park Fee is due and
7 payable to the Treasurer prior to issuance of the first ~~building or site permit~~ certificate of
8 occupancy in accordance with paragraph (e) of this Section. If, for any reason, the fee remains
9 unpaid following issuance of the ~~permit~~ certificate, any amount due shall accrue interest at the rate of
10 one and one-half percent per month, or fraction thereof, from the date of issuance of the ~~permit~~
11 certificate until the date of final payment.

12 (2) If, for any reason, the fee imposed by this section remains unpaid following
13 issuance of the ~~permit~~ certificate of occupancy, the Treasurer shall initiate proceedings in
14 accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire
15 unpaid balance of the Downtown Park Fee, including interest, a lien against all parcels used for the
16 development project. The Treasurer shall send all notices required by that Article to the owner of the
17 property as well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the
18 sponsor of a hearing to confirm such report by the Board of Supervisors at least 10 days before the
19 date of the hearing. The report to the sponsor shall contain the sponsor's name, a description of the
20 sponsor's development project, a description of the parcels of real property to be encumbered as set
21 forth in the Assessor's Map Books for the current year, a description of the alleged violation of this
22 Section, and shall fix a time, date, and place for hearing. The Treasurer shall cause this report to be
23 mailed to the sponsor and each owner of record of the parcels of real property subject to lien. Except
24 for the release of the lien recording fee authorized by Administrative Code Section 10.237, all sums
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1 collected by the Tax Collector under this Section shall be held in trust by the Treasurer and deposited
2 in the Downtown Park Fund established under subsection (f).

3 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or
4 served upon the sponsor or owner for all purposes in this Section if personally served upon the sponsor
5 or owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the
6 sponsor or owner at the official address of the sponsor or owner maintained by the Tax Collector for
7 the mailing of tax bills or, if no such address is available, to the sponsor at the address of the
8 development project, and to the applicant for the site or building permit at the address on the permit
9 application.

10 ~~(i) Fee Refund When Permit Expires Prior to Completion of Work. In the event~~
11 ~~a building permit expires prior to completion of the work on and commencement of occupancy~~
12 ~~of a development project so that it will be necessary to obtain a new permit to carry out any~~
13 ~~development, the obligation to comply with this Section shall be cancelled, and any in-lieu fee~~
14 ~~previously paid to the Treasurer shall be refunded. If and when the sponsor applies for a new~~
15 ~~permit, the procedures set forth in this ordinance regarding construction of housing or~~
16 ~~payment of the in-lieu fee shall be followed.~~

17 ~~(j)(i) One Time Fee Payment. In the event that a development project for which the fee~~
18 ~~imposed by this Section has been fully paid is demolished or converted to a use or uses not subject to~~
19 ~~this Section prior to the expiration of its estimated useful life, the City shall refund to the sponsor a~~
20 ~~portion of the amount of the fee paid. The portion of the fee refunded shall be determined on a pro rata~~
21 ~~basis according to the ratio of the remaining useful life of the project at the time of demolition or~~
22 ~~conversion in relation to its total useful life. For purposes of this ordinance, the useful life of a~~
23 ~~development project shall be 50 years.~~

24 Section 2. The San Francisco Planning Code is amended by amending Sections
25 313.1, 313.4, 313.5, 313.6, 313.7, 313.8, 313.9 and 313.10, to read as follows:

1 **SEC. 313.1. DEFINITIONS.**

2 The following definitions shall govern interpretation of this ordinance:

3 (1) “Affordable housing project” shall mean a housing project containing units
4 constructed to satisfy the requirements of Sections 313.5 or 313.7 of this ordinance or
5 receiving funds from the Citywide Affordable Housing Fund under Section 313.12.

6 (2) “Affordable to a household” shall mean a purchase price that a household
7 can afford to pay based on an annual payment for all housing costs of 33 percent of the
8 combined household annual net income, a 10 percent down payment, and available financing,
9 or a rent that a household can afford to pay based on an annual payment for all housing costs
10 of 30 percent of the combined annual net income.

11 (3) “Affordable to qualifying households” shall mean:

12 (A) With respect to owned units, the average purchase price on the initial
13 sale of all affordable owned units in an affordable housing project shall not exceed the
14 allowable average purchase price. Each unit shall be sold:

15 (i) Only to households with an annual net income equal to or less than that
16 of a household of moderate income; and

17 (ii) At or below the maximum purchase price.

18 (B) With respect to rental units in an affordable housing project, the average
19 annual rent shall not exceed the allowable average annual rent. Each unit shall be rented:

20 (i) Only to households with an annual net income equal to or less than that
21 of a household of lower income;

22 (ii) At or less than the maximum annual rent.

23 (4) “Allowable average purchase price” shall mean:

1 (A) For all affordable one-bedroom units in a housing project, a price
2 affordable to a two- person household of median income as set forth in Title 25 of the
3 California Code of Regulations Section 6932 (“Section 6932”) on January 1st of that year;

4 (B) For all affordable two-bedroom units in a housing project, a price
5 affordable to a three-person household of median income as set forth in Section 6932 on
6 January 1st of that year;

7 (C) For all affordable three-bedroom units in a housing project, a price
8 affordable to a four- person household of median income as set forth in Section 6932 on
9 January 1st of that year;

10 (D) For all affordable four-bedroom units in a housing project, a price
11 affordable to a five- person household of median income as set forth in Section 6932 on
12 January 1st of that year.

13 (5) “Allowable average annual rent” shall mean:

14 (A) For all affordable one-bedroom units in a housing project, 18 percent of
15 the median income for a household of two persons as set forth in Section 6932 on January 1st
16 of that year;

17 (B) For all affordable two-bedroom units in a housing project, 18 percent of
18 the median income for a household of three persons as set forth in Section 6932 on January
19 1st of that year;

20 (C) For all affordable three-bedroom units in a housing project, 18 percent of
21 the median income for a household of four persons as set forth in Section 6932 on January
22 1st of that year;

23 (D) For all affordable four-bedroom units in a housing project, 18 percent of
24 the median income for a household of five persons as set forth in Section 6932 on January 1st
25 of that year.

1 (6) "Annual net income" shall mean net income as defined in Title 25 of the
2 California Code of Regulations Section 6916.

3 (7) "Average annual rent" shall mean the total annual rent for the calendar
4 year charged by a housing project for all affordable rental units in the project of an equal
5 number of bedrooms divided by the total number of affordable units in the project with that
6 number of bedrooms.

7 (8) "Average purchase price" shall mean the purchase price for all affordable
8 owned units in an affordable housing project of an equal number of bedrooms divided by the
9 total number of affordable units in the project with that number of bedrooms.

10 (9) "City" shall mean the City and County of San Francisco.

11 (10) "Community apartment" shall be defined in San Francisco Subdivision
12 Code Section 1308(b).

13 (11) "Condominium" shall be as defined in California Civil Code Section 783.

14 (12) *"Director of Building Inspection" "DBI" shall mean the Director of the*
15 *Department of Building Inspection ~~or his or her designee, including other City agencies or~~*
16 *departments.*

17 ~~(13) "Director of the Mayor's Office of Housing" shall mean the Director of the~~
18 ~~Mayor's Office of Housing or his or her designee, including the director of any agency designated by~~
19 ~~the Mayor as a successor to the Mayor's Office of Housing."~~

20 ~~(14) "Director of Planning" shall mean the Director of "Department" shall mean the~~
21 ~~Planning Department or the Planning Department's his or her designee designee, including the~~
22 ~~Mayor's Office of Housing and other City agencies or departments including the Mayor's Office of~~
23 ~~Housing and other City agencies or departments.~~

1 (~~1514~~) "Entertainment development project" shall mean any new construction,
2 addition, extension, conversion, or enlargement, or combination thereof, of an existing
3 structure which includes any gross square feet of entertainment use.

4 (~~1615~~) "Entertainment use" shall mean space within a structure or portion thereof
5 intended or primarily suitable for the operation of a nighttime entertainment use as defined in
6 San Francisco Planning Code Section 102.17, a movie theater use as defined in San
7 Francisco Planning Code Sections 790.64 and 890.64, an adult theater use as defined in San
8 Francisco Planning Code Section 191, any other entertainment use as defined in San
9 Francisco Planning Code Sections 790.38 and 890.37, and, notwithstanding San Francisco
10 Planning Code Section 790.38, an amusement game arcade (mechanical amusement
11 devices) use as defined in San Francisco Planning Code Sections 790.4 and 890.4. Under
12 this ordinance, "entertainment use" shall include all office and other uses accessory to the
13 entertainment use, but excluding retail uses and office uses not accessory to the
14 entertainment use.

15 (~~1716~~) "First certificate of occupancy" shall mean either a temporary certificate of
16 occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco
17 Building Code Section 109, whichever is issued first.

18 (~~1817~~) "Hotel development project" shall mean any new construction, addition,
19 extension, conversion, or enlargement, or combination thereof, of an existing structure which
20 includes any gross square feet of hotel use.

21 (~~1918~~) "Hotel use" shall mean space within a structure or portion thereof
22 intended or primarily suitable for rooms, or suites of two or more rooms, each of which may or
23 may not feature a bathroom and cooking facility or kitchenette and is designed to be occupied
24 by a visitor or visitors to the City who pays for accommodations on a daily or weekly basis but
25 who do not remain for more than 31 consecutive days. Under this ordinance, "hotel use" shall

1 include all office and other uses accessory to the renting of guest rooms, but excluding retail
2 uses and office uses not accessory to the hotel use.

3 (~~2019~~) "Household" shall mean any person or persons who reside or intend to
4 reside in the same housing unit.

5 (~~2120~~) "Household of lower income" shall mean a household composed of one
6 or more persons with a combined annual net income for all adult members which does not
7 exceed the qualifying limit for a lower-income family of a size equivalent to the number of
8 persons residing in such household, as set forth for the County of San Francisco in Title 25 of
9 the California Code of Regulations Section 6932.

10 (~~2221~~) "Household of median income" shall mean a household composed of one
11 or more persons with a combined annual net income for all adult members which does not
12 exceed the qualifying limit for a median-income family of a size equivalent to the number of
13 persons residing in such household, as set forth for the County of San Francisco in Title 25 of
14 the California Code of Regulations Section 6932.

15 (~~2322~~) "Household of moderate income" shall mean a household composed of
16 one or more persons with a combined annual net income for all adult members which does
17 not exceed the qualifying limit for a moderate-income family of a size equivalent to the number
18 of persons residing in such household, as set forth for the County of San Francisco in Title 25
19 of the California Code of Regulations Section 6932.

20 (~~2423~~) "Housing developer" shall mean any business entity building housing
21 units which receives a payment from a sponsor for use in the construction of the housing
22 units. A housing developer may be (a) the same business entity as the sponsor, (b) an entity
23 in which the sponsor is a partner, joint venturor, or stockholder, or (c) an entity in which the
24 sponsor has no control or ownership.

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1 (~~2524~~) "Housing unit" or "unit" shall mean a dwelling unit as defined in San
2 Francisco Housing Code Section 401.

3 (~~2625~~) "Interim Guidelines" shall mean the Office Housing Production Program
4 Interim Guidelines adopted by the City Planning Commission on January 26, 1982, as
5 amended.

6 (~~2726~~) "Maximum annual rent" shall mean the maximum rent that a housing
7 developer may charge any tenant occupying an affordable unit for the calendar year. The
8 maximum annual rent shall be 30 percent of the annual income for a lower-income household
9 as set forth in Section 6932 on January 1st of each year for the following household sizes:

- 10 (A) For all one-bedroom units, for a household of two persons;
- 11 (B) For all two-bedroom units, for a household of three persons;
- 12 (C) For all three-bedroom units, for a household of four persons;
- 13 (D) For all four-bedroom units, for a household of five persons.

14 (~~2827~~) "Maximum purchase price" shall mean the maximum purchase price that
15 a household of moderate income can afford to pay for an owned unit based on an annual
16 payment for all housing costs of 33 percent of the combined household annual net income, a
17 10 percent down payment, and available financing, for the following household sizes:

- 18 (A) For all one-bedroom units, for a household of two persons;
- 19 (B) For all two-bedroom units, for a household of three persons;
- 20 (C) For all three-bedroom units, for a household of four persons;
- 21 (D) For all four-bedroom units, for a household of five persons.

22 (28) "MOH" shall mean the Mayor's Office of Housing.

23 (29) "Net addition of gross square feet of entertainment space" shall mean
24 gross floor area as defined in San Francisco Planning Code Section 102.9 to be occupied by,
25 or primarily serving, entertainment use, less the gross floor area in any structure demolished

1 or rehabilitated as part of the proposed entertainment development project that was used
2 primarily and continuously for entertainment, hotel, office, research and development, or retail
3 use and was not accessory to any use other than entertainment, hotel, office, research and
4 development, or retail use, for five years prior to Planning Commission approval of an
5 entertainment development project subject to this Section, or for the life of the structure
6 demolished or rehabilitated, whichever is shorter, so long as such space was subject to this
7 ordinance or the Interim Guidelines.

8 (30) "Net addition of gross square feet of hotel space" shall mean gross floor
9 area as defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily
10 serving, hotel use, less the gross floor area in any structure demolished or rehabilitated as
11 part of the proposed hotel development project that was used primarily and continuously for
12 entertainment, hotel, office, research and development, or retail use and was not accessory to
13 any use other than entertainment, hotel, office, research and development, or retail use, for
14 five years prior to Planning Commission approval of a hotel development project subject to
15 this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter, so
16 long as such space was subject to this ordinance or the Interim Guidelines.

17 (31) "Net addition of gross square feet of office space" shall mean gross floor
18 area as defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily
19 serving, office use, less the gross floor area in any structure demolished or rehabilitated as
20 part of the proposed office development project that was used primarily and continuously for
21 entertainment, hotel, office, research and development, or retail use and was not accessory to
22 any use other than entertainment, hotel, office, research and development, or retail use for
23 five years prior to Planning Commission approval of an office development project subject to
24 this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.

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1 (32) "Net addition of gross square feet of research and development space"
2 shall mean gross floor area as defined in San Francisco Planning Code Section 102.9 to be
3 occupied by, or primarily serving, research and development use, less the gross floor area in
4 any structure demolished or rehabilitated as part of the proposed research and development
5 project that was used primarily and continuously for entertainment, hotel, office, research and
6 development, or retail use and was not accessory to any use other than entertainment, hotel,
7 office, research and development, or retail use, for five years prior to Planning Commission
8 approval of a research and development project subject to this Section, or for the life of the
9 structure demolished or rehabilitated, whichever is shorter.

10 (33) "Net addition of gross square feet of retail space" shall mean gross floor
11 area as defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily
12 serving, retail use, less the gross floor area in any structure demolished or rehabilitated as
13 part of the proposed retail development project that was used primarily and continuously for
14 entertainment, hotel, office, research and development, or retail use and was not accessory to
15 any use other than entertainment, hotel, office, research and development, or retail use, for
16 five years prior to Planning Commission approval of a retail development project subject to
17 this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.

18 (34) "Office development project" shall mean any new construction, addition,
19 extension, conversion, or enlargement, or combination thereof, of an existing structure which
20 includes any gross square feet of office use.

21 (35)(A) "Office use" shall mean space within a structure or portion thereof
22 intended or primarily suitable for occupancy by persons or entities which perform, provide for
23 their own benefit, or provide to others at that location services including, but not limited to, the
24 following:

25

1 (+) Professional, banking; insurance; management; consulting; technical;
2 sales; and design; and the non-accessory office functions of manufacturing and warehousing
3 businesses; all uses encompassed within the definition of "office" at Section 219 of this Code;
4 multimedia, software development, web design, electronic commerce, information technology
5 and other computer based technology; all uses encompassed within the definition of
6 "administrative services" at Section 790.106 or Section 890.106 of this Code; all "business or
7 professional services" as proscribed at Section 890.108 of this Code excepting only those
8 uses which are limited to the Chinatown Mixed Use District; all "business services," as
9 described at Section 890.11 of this Code which are conducted in space designated for office
10 use under the San Francisco Building Code and which are not excluded pursuant to
11 Subsection B below.

12 (B) Under this ordinance, "office use" shall exclude: retail uses; repair; any
13 business characterized by the physical transfer of tangible goods to customers on the
14 premises; wholesale shipping, receiving and storage; research and development; and space
15 ~~primarily used for, or where the most recent use was primarily for, the display of goods,~~
16 ~~wares, or merchandise, including but not limited to: (1) showrooms, design showrooms, and~~
17 ~~design showcases, (2) space displaying goods, wares, and merchandise either as samples or~~
18 ~~for sale, (3) space in which the occupants negotiate sales transactions, (4) display space in~~
19 ~~buildings that also contain office use as defined in subsection (A), and (5) space actually used~~
20 ~~for display of goods, wares, and merchandise even if intended and primarily suitable for~~
21 ~~offices *design showcases or any other space intended and primarily suitable for display of goods*~~
22 design showcases or any other space intended and primarily suitable for display of goods.

23 (36) "Ordinance" shall mean San Francisco Planning Code Sections 313.1
24 through 313.14.

25

1 (37) "Owned unit" shall mean a unit affordable to qualifying households which
2 is a condominium, stock cooperative, community apartment, or detached single-family home.
3 The owner or owners of an owned unit must occupy the unit as their primary residence.

4 (38) "Owner" shall mean the record owner of the fee or a vendee in
5 possession.

6 (39) "Rent" or "rental" shall mean the total charges for rent, utilities, and
7 related housing services to each household occupying an affordable unit.

8 (40) "Rental unit" shall mean a unit affordable to qualifying households which
9 is not a condominium, stock cooperative, or community apartment.

10 (41) "Research and Development ("R&D") project" shall mean any new
11 construction, addition, extension, conversion, or enlargement, or combination thereof, of an
12 existing structure which includes any gross square feet of R&D use.

13 (42) "Research and development use" shall mean space within any structure
14 or portion thereof intended or primarily suitable for basic and applied research or systematic
15 use of research knowledge for the production of materials, devices, systems, information or
16 methods, including design, development and improvement of products and processing,
17 including biotechnology, which involves the integration of natural and engineering sciences
18 and advanced biological techniques using organisms, cells, and parts thereof for products and
19 services, excluding laboratories which are defined as light manufacturing uses consistent with
20 Section 226 of the Planning Code.

21 (43) "Retail development project" shall mean any new construction, addition,
22 extension, conversion, or enlargement, or combination thereof, of an existing structure which
23 includes any gross square feet of retail use.

24 (44) "Retail use" shall mean space within any structure or portion thereof
25 intended or primarily suitable for occupancy by:

1 (A) Persons or entities which supply commodities to customers on the
2 premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking
3 businesses, and the uses defined in San Francisco Planning Code Sections 218 and 220
4 through 225, and also including all space accessory to such retail use; and

5 (B) All space accessory to such retail use.

6 (45) "Section 6932" shall mean Section 6932 of Title 25 of the California Code
7 of Regulations as such section applies to the County of San Francisco.

8 (46) "Sponsor" shall mean an applicant seeking approval for construction of an
9 office development project subject to this Section, such applicants' successors and assigns,
10 and/or any entity which controls or is under common control with such applicant.

11 (47) "Stock cooperative" shall be as defined in California Business and
12 Professions Code Section 11003.2.

13 **SEC. 313.4. IMPOSITION OF HOUSING REQUIREMENT.**

14 (a) The Planning Department or the Planning Commission shall impose a
15 condition on the approval of an application for a development project subject to this ordinance
16 in order to mitigate the impact on the availability of housing which will be caused by the
17 employment facilitated by that project. The condition shall require that the applicant pay or
18 contribute land suitable for housing to a housing developer to construct housing or pay an in-
19 lieu fee to the City ~~Controller~~ Treasurer which shall thereafter be used exclusively for the
20 development of housing affordable to households of lower or moderate income.

21 (b) Prior to either the Department's or the Commission's approval of a
22 building or site permit for a development project subject to this ordinance, the Department
23 shall issue a notice complying with Planning Code Section 306.3 setting forth its initial
24 determination of the net addition of gross square feet of each type of space subject to this
25 ordinance.

1 (c) Any person may appeal the initial determination by delivering an appeal
2 in writing to the Department within 15 days of such notice. If the initial determination is not
3 appealed within the time allotted, the initial determination shall become a final determination.
4 If the initial determination is appealed, the Commission shall schedule a public hearing prior to
5 the approval of the development project by the Department or the Commission to determine
6 the net addition of gross square feet of each type of space subject to this ordinance. The
7 public hearing may be scheduled separately or simultaneously with a hearing under Planning
8 Code Sections 139(g), 306.2, 309(h), 314.5, 315.3 or a Discretionary Review hearing under
9 San Francisco Municipal Code Part III, Section 26. The Commission shall make a final
10 determination of the net addition of gross square feet of each type of space subject to this
11 ordinance at the hearing.

12 (d) The final determination of the net addition of gross square feet of each
13 type of space subject to this ordinance shall be set forth in the conditions of approval of any
14 building or site permit application approved by the Department or the Commission. *The*
15 *Planning Department shall notify the Treasurer, DBI and MOH of the final determination of the net*
16 *addition of gross square feet of each type of space subject to this ordinance within 30 days following*
17 *the date of the final determination. The Director of Planning shall notify the Director of Building*
18 *Inspection and the Director of the Mayor's Office of Housing that a development project is subject to*
19 *this ordinance at the time the Department or the Commission approves the building or site permit for*
20 *the development project.*

21 (e) In the event that the Department or the Commission takes action affecting
22 any development project subject to this ordinance and such action is thereafter modified,
23 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by
24 court action, the permit application for such development project shall be remanded to the
25 Commission to determine whether the proposed project has been changed in a manner which

1 affects the calculation of the amount of housing required under this ordinance and, if so, the
2 Commission shall revise the housing requirement imposed on the permit application in
3 compliance with this ordinance within 60 days of such remand and notify the sponsor in
4 writing of such revision or that a revision is not required. If the net addition of gross square feet of
5 any type of space subject to this ordinance is revised, the Commission shall notify the Treasurer, DBI
6 and MOH of the nature and extent of the revision.

7 (f) The sponsor shall supply all information to the Department and the
8 Commission necessary to make a determination as to the applicability of this ordinance and
9 the number of gross square feet of each type of space subject to this ordinance.

10 (g) The sponsor of any development project subject to this ordinance shall
11 have the option of:

12 (1) Contributing a sum or land of value at least equivalent to the in-lieu fee
13 according to the formula set forth in Section 313.6 to one or more housing developers who will
14 use the funds or land to construct housing units pursuant to Section 313.5 for each type of
15 space subject to this ordinance; or

16 (2) Paying an in-lieu fee to the ~~Controller~~ Treasurer according to the formula
17 set forth in Section 313.6 for each type of space subject to this ordinance; or

18 (3) Combining the above options pursuant to Section 313.7 for each type of
19 space subject to this ordinance.

20 **SEC. 313.5. COMPLIANCE THROUGH PAYMENT TO HOUSING DEVELOPER.**

21 (a) If the sponsor elects to pay a sum or contribute land of value at least
22 equivalent to the in-lieu fee to one or more housing developers to meet the requirements of
23 this ordinance, the housing developer or developers shall be required to construct at least the
24 number of housing units determined by the following formulas for each type of space
25 proposed as part of the development project and subject to this ordinance:

1 Net Addition Gross Sq. Ft. Entertainment Space × .000140 = Housing
2 Units

3 Net Addition Gross Sq. Ft. Hotel Space × .000110 = Housing Units

4 Net Addition Gross Sq. Ft. R & D Space × .000200 = Housing Units

5 Net Addition Gross Sq. Ft. Retail Space × .000140 = Housing Units

6 The housing units required to be constructed under the above formula must be
7 affordable to qualifying households continuously for 50 years. If the sponsor elects to
8 contribute to more than one distinct housing development under this Section, the sponsor
9 shall not receive credit for its monetary contribution to any one development in excess of the
10 amount of the in-lieu fee, as adjusted under Section 313.6, multiplied by the number of units in
11 such housing development.

12 (b) Within one year of the final determination under Section 313.4(c) or a
13 revised final determination under Section 313.4(e), or prior to the issuance by ~~the Director of~~
14 ~~Building Inspection~~ DBI of the first site or building permit for a development project subject to
15 this ordinance, whichever occurs first, the sponsor shall submit to the ~~Director of~~ Planning
16 Department, with a copy to ~~the Director of the Mayor's Office of Housing~~ MOH:

17 (1) A written housing development plan identifying the housing project or
18 projects to receive funds or land from the sponsor and the proposed mechanism for enforcing
19 the requirement that the housing units constructed will be affordable to qualifying households
20 for 50 years; and

21 (2) A certification that the sponsor has made a binding commitment to
22 contribute an amount of money or land of value at least equivalent to the amount of the in-lieu
23 fee that would otherwise be required under Section 313.6 to one or more housing developers
24 and that the housing developer or developers shall use such funds or lands to develop the
25 housing subject to this Section.

1 (3) A self-contained appraisal report as defined by the Uniform Standards of
2 Professional Appraisal Practice prepared by an M.A.I. appraiser of the fair market value of any
3 land to be contributed by the sponsor to a housing developer. The date of value of the
4 appraisal shall be the date on which the sponsor submits the housing development plan and
5 certification to the ~~Director of~~ Planning Department.

6 If the sponsor fails to comply with these requirements within one year of the final
7 determination or revised final determination, it shall be deemed to have elected to pay the in-
8 lieu fee under Section 313.6 to comply with this ordinance. In the event that the sponsor fails
9 to pay the in-lieu fee within the time required by Section 313.6, ~~the Director of Building~~
10 ~~Inspection-DBI~~ shall deny any and all site or building permits or certificates of occupancy for
11 the development project until the ~~Director of Planning~~ Treasurer notifies ~~the Director of Building~~
12 ~~Inspection-DBI~~ and ~~the Director of the Mayor's Office of Housing~~ MOH that such payment has
13 been made or land contributed, and the ~~Director of Planning~~ Treasurer shall immediately initiate
14 lien proceedings against the sponsor's property pursuant to Section 313.9 to recover the fee.

15 (c) Within 30 days after the sponsor has submitted a written housing
16 development project plan and, if necessary, an appraisal to the ~~Director of~~ Planning
17 Department and ~~the Director of the Mayor's Office of Housing~~ MOH under Subsection (b) of this
18 Section, the ~~Director of~~ Planning Department shall notify the sponsor in writing of ~~his or her~~ its
19 initial determination as to whether the plan and appraisal are in compliance with this Section,
20 publish the initial determination in the next Planning Commission calendar, and cause a public
21 notice to be published in an official newspaper of general circulation stating that such housing
22 development plan has been received and stating the ~~Director of~~ Planning Department's initial
23 determination. In making the initial determination for an application where the sponsor elects
24 to contribute land to a housing developer, the ~~Director of~~ Planning Department shall consult
25 with the Director of Property and include within ~~his or her~~ its initial determination a finding as to

1 the fair market value of the land proposed for contribution to a housing developer. Within 10
2 days after such written notification and published notice, the sponsor or any other person may
3 request a hearing before the Commission to contest such initial determination. If the *Director*
4 *of Planning Department* receives no request for a hearing within such 10-day period, the
5 determination of the *Director of Planning Department* shall become a final determination. Upon
6 receipt of any timely request for hearing, the *Director of Planning Department* shall schedule a
7 hearing before the Commission within 30 days. The scope of the hearing shall be limited to
8 the compliance of the housing development plan and appraisal with this Section, and shall not
9 include a challenge to the amount of the housing requirement imposed on the development
10 project by the Department or the Commission. At the hearing, the Commission may either
11 make such revisions to the *Director of Planning Department's* initial determination as it may
12 deem just, or confirm the *Director of Planning Department's* initial determination. The
13 Commission's determination shall then become a final determination, and the *Director of*
14 *Planning Department* shall provide written notice of the final determination to the sponsor, *the*
15 *Director of the Mayor's Office of Housing MOH*, and to any person who timely requested a
16 hearing of the *Director of Planning Department's* determination. The *Director of Planning*
17 *Department* shall also provide written notice to the *Treasurer, Director of Building Inspection DBI*
18 *and the Director of the Mayor's Office of Housing MOH* that the housing units to be constructed
19 pursuant to such plan are subject to this ordinance.

20 (d) In making a determination as to whether *a sponsor's a sponsor's* housing
21 development plan complies with this Section, the Director of Planning and the Commission
22 shall credit to the sponsor any excess Interim Guideline credits or excess credits that the
23 sponsor elects to apply against its housing requirement. The remaining housing units required
24 shall be subject to the requirements of Subsection (a) of this Section.

25

1 (e) Prior to the issuance by ~~the Director of Building Inspection DBI~~ of the first
2 site or building permit for a development project subject to this Section, the sponsor must:

3 (1) Provide evidence to the ~~Director of Planning Department~~ in writing that it
4 has paid in full the sum or transferred title of the land required by Subsection (a) of this
5 Section to one or more housing developers;

6 (2) Notify the ~~Director of Planning Department~~ that construction of the housing
7 units has commenced, evidenced by:

8 (A) The City's issuance of site and building permits for the entire housing
9 development project,

10 (B) Written authorization from the housing developer and the construction
11 lender that construction may proceed,

12 (C) An executed construction contract between the housing developer and a
13 general contractor, and

14 (D) The issuance of a performance bond enforceable by the construction
15 lender for 100 percent of the replacement cost of the housing project; and

16 (3) Provide evidence satisfactory to the ~~Director of Planning Department~~ that
17 the units required to be constructed will be affordable to qualifying households for 50 years
18 through an enforcement mechanism approved by the ~~Director of Planning Department~~ pursuant
19 to Subsection s (b) through (d) of this Section.

20 ~~The Director of Building Inspection DBI~~ shall provide notice in writing to the
21 ~~Treasurer, the Director of Planning Department and the Director of the Mayor's Office of Housing~~
22 ~~MOH~~ at least five business days prior to issuance of the first site or building permit for any
23 development project for which the sponsor elects to pay a sum or contribute land to one or
24 more housing developers. If the ~~Treasurer, or the Director of Planning Department~~ notifies ~~the~~
25 ~~Director of Building Inspection DBI~~ within the five business days that the conditions of (1)

1 through (3) of this Subsection have not been met, ~~the Director of Building Inspection DBI shall~~
2 ~~refuse any and all deny the~~ site or building permits ~~or certificates of occupancy~~ or certificates of
3 occupancy for the development project. ~~If the Director of Planning notifies the Director of~~
4 ~~Building Inspection that the sponsor has complied with these conditions or fails to respond within five~~
5 ~~business days, the Director of Building Inspection shall not disapprove a site or building permit or~~
6 ~~certificate of occupancy pursuant to this Section.~~ Any failure of the Treasurer, Director of Building
7 Inspection DBI or the ~~Director of Planning Department~~ to give any notice under this Section shall
8 not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or
9 building permit or certificate of occupancy without complying with the requirements of this section,
10 the sponsor shall be deemed to have elected to pay the in-lieu fee pursuant to Section 313.6, and shall
11 immediately be liable for the amount of the fee plus accrued interest in accordance with Section 313.9.
12 In addition, DBI shall not issue any certificate of occupancy for the project without notification from
13 the Treasurer that the sponsor has paid the fee plus any interest due. The procedure set forth in this
14 Subsection is not intended to preclude enforcement of the provisions of this section under any other
15 section of this Code or other authority under the laws of the State of California. Where the Director of
16 Building Inspection issues any site or building permit or certificate of occupancy for the development
17 project in error, the Director of Planning shall initiate lien proceedings against the development
18 project under Section 313.9, and the Director of Building Inspection shall revoke any permit or
19 certificate issued in error and refuse any site or building permit or certificate of occupancy until the
20 sponsor has complied with this Section.

21 (f) Where the sponsor elects to pay a sum or contribute land of value
22 equivalent to the in-lieu fee to one or more housing developers, the sponsor's responsibility
23 for completing construction of and maintaining the affordability of housing units constructed
24 ceases from and after the date on which:
25

1 (1) The conditions of (1) through (3) of Subsection (e) of this Section have
2 been met; and

3 (2) A mechanism has been approved by the ~~Director of Planning~~ Department
4 to enforce the requirement that the housing units constructed will be affordable to qualifying
5 households continuously for 50 years.

6 (g) Where the sponsor initially elects to pay a sum and/or contribute land of value
7 equivalent to the in-lieu fee to one or more housing developers, but subsequently decides instead to pay
8 the in-lieu fee, the sponsor shall immediately be liable for the amount of the in-lieu fee under Section
9 313.6 and interest in accordance with Section 313.9.

10 **SEC. 313.6. COMPLIANCE THROUGH PAYMENT OF IN-LIEU FEE.**

11 (a) Commencing on March 11, 1999, the amount of the fee which may be
12 paid by the sponsor of a development project subject to this ordinance in lieu of developing
13 and providing the housing required by Section 313.5 shall be determined by the following
14 formulas for each type of space proposed as part of the development project and subject to
15 this ordinance.

16 ///

17 ///

18 ///

19 ///

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21 ///

22 ///

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24 ///

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1	<i>Net Addition Gross Sq. Ft. Entertainment Space</i>	X	\$10.57	=	<i>Total Fee</i>
2					
3	<i>Net Addition Gross Sq. Ft. Hotel Space</i>	X	\$8.50	=	<i>Total Fee</i>
4					
5	<i>Net Addition Gross Sq. Ft. Office Space</i>	X	\$11.34	=	<i>Total Fee</i>
6					
7	<i>Net Addition Gross Sq. Ft. Research and Development</i>	X	\$7.55	=	<i>Total Fee</i>
8					
9	<i>Net Addition Gross Sq. Ft. Retail Space</i>	X	\$10.57	=	<i>Total Fee</i>
10					
11					

12 (b) Commencing on January 1, 2002, the amount of the fee which may be
 13 paid by the sponsor of a development project subject to this ordinance in lieu of developing
 14 and providing the housing required by Section 313.5 shall be determined by the following
 15 formulas for each type of space proposed as part of the development project and subject to
 16 this ordinance:

17 ///
 18 ///
 19 ///
 20 ///
 21 ///
 22 ///
 23 ///
 24 ///
 25 ///

1	<i>Net Addition Gross Sq. Ft. Entertainment Space</i>	X	\$13.95	=	<i>Total Fee</i>
2					
3	<i>Net Addition Gross Sq. Ft. Hotel Space</i>	X	\$11.221	=	<i>Total Fee</i>
4					
5	<i>Net Addition Gross Sq. Ft. Office Space</i>	X	\$14.96	=	<i>Total Fee</i>
6					
7	<i>Net Addition Gross Sq. Ft. R & D Space</i>	X	\$9.97	=	<i>Total Fee</i>
8					
9	<i>Net Addition Gross Sq. Ft. Retail Space</i>	X	\$13.95	=	<i>Total Fee</i>
10					
11					

12 Such in-lieu fee shall be revised effective January 1st of each year thereafter, by the
13 percentage increase or decrease in the Average Area Purchase Price Safe Harbor Limitations
14 for New Single-Family Residences for the San Francisco Primary Metropolitan Statistical Area
15 ("PMSA") established by the Internal Revenue Service ("IRS") since January 1st of the
16 previous year; provided, however, that in the event that said percentage increase exceeds 20
17 percent, the in-lieu fee shall be increased by 20 percent, and the difference between the
18 percentage increase in the Average Area Purchase Price and 20 percent shall be carried over
19 and added to the in-lieu fee adjustment for the following calendar year. In the event that the
20 IRS does not adjust the above figure within a 14-month period, the Commission shall
21 authorize and certify a study for adjusting the last published IRS figure, to be effective until the
22 IRS revises the figure. In making a determination as to the amount of the fee to be paid, the
23 *Director of Planning Department* shall credit to the sponsor any excess Interim Guideline
24 credits or excess credits which the sponsor elects to apply against its housing requirement.
25

1 (c) Prior to the issuance by ~~the Director of Building Inspection~~DBI of the first
2 site or building permit for a development project subject to this ordinance, the sponsor must
3 notify the ~~Director of Planning~~ Department and ~~Director of the Mayor's Office of Housing~~ MOH in
4 writing that it has either (i) satisfied the conditions of Section 313.5(e) or (ii) paid in full the
5 sum required by this Section to the ~~Controller~~Treasurer. If the sponsor fails by the applicable
6 date to demonstrate to the ~~Director of Planning~~ Department that the sponsor has satisfied the
7 conditions of Section 313.5(e) or paid the applicable sum in full to the ~~Controller~~Treasurer, ~~the~~
8 ~~Director of Building Inspection~~DBI shall deny any and all site or building permits ~~or certificates of~~
9 ~~occupancy~~ or certificates of occupancy for the development project until the ~~Director of Planning~~
10 ~~Treasurer~~ notifies ~~the Director of Building Inspection~~ DBI and ~~the Director of the Mayor's Office of~~
11 ~~Housing~~ MOH that such payment has been made, and the ~~Director of Planning~~ Treasurer shall
12 immediately initiate lien proceedings against the sponsor's property pursuant to Section 313.9
13 to recover the fee.

14 (d) Upon payment of the fee in full to the ~~Controller~~Treasurer and upon
15 request of the sponsor, the ~~Controller~~Treasurer shall issue a certification that the fee has been
16 paid. The sponsor shall present such certification to the ~~Director of Planning~~ Department, DBI
17 and ~~the Director of the Mayor's Office of Housing~~ MOH prior to the issuance by ~~the Director of~~
18 ~~Building Inspection~~ DBI of the first site or building permit ~~or certificate of occupancy~~ or certificate
19 of occupancy for the development project. ~~The Director of Building Inspection shall provide~~
20 ~~notice in writing to the Director of Planning and the Director of the Mayor's Office of Housing at least~~
21 ~~five business days prior to issuing the first site or building permit or certificate of occupancy for any~~
22 ~~development project subject to this Section.~~ ~~If the Director of Planning notifies the Director of~~
23 ~~Building Inspection and the Director of the Mayor's Office of Housing within such time that the~~
24 ~~sponsor has not complied with the provisions of this Section, the Director of Building Inspection~~ DBI
25 shall ~~deny any and all the site or building permits~~ ~~or certificates of occupancy~~ not issue the site or

1 building permit or certificate of occupancy without proof of payment of the fee from the Treasurer.
2 ~~If the Director of Planning notifies the Director of Building Inspection and the Director of the Mayor's~~
3 ~~Office of Housing that the sponsor has complied with this Section, or fails to respond within five~~
4 ~~business days, a site or building permit or certificate of occupancy shall not be disapproved pursuant to~~
5 ~~this Section. Any failure of the Treasurer, Director of Building Inspection DBI or the Director of~~
6 ~~Planning Department to give any notice under this Section shall not relieve a sponsor from~~
7 ~~compliance with this Section. Where DBI inadvertently issues a site or building permit without~~
8 ~~payment of the fee, DBI shall not issue any certificate of occupancy for the project without notification~~
9 ~~from the Treasurer that the fee required by this Section has been paid. The procedure set forth in this~~
10 ~~Subsection is not intended to preclude enforcement of the provisions of this section pursuant to any~~
11 ~~other section of this Code, or other authority under the laws of the State of California. Where the~~
12 ~~Director of Building Inspection issues any site or building permit or certificate of occupancy for the~~
13 ~~development project in error, or where a sponsor fails for any reason to pay the in-lieu fee to the~~
14 ~~Controller in compliance with this Section prior to the Director of Building Inspection's issuance of the~~
15 ~~first site or building permit or certificate of occupancy for the development project, the Director of~~
16 ~~Planning shall immediately initiate lien proceedings against the development project under Section~~
17 ~~313.9 to recover the fee, and the Director of Building Inspection shall revoke any permit or certificate~~
18 ~~issued in error and refuse any site or building permit or certificate of occupancy until the sponsor has~~
19 ~~complied with this Section.~~

20 **SEC. 313.7. COMPLIANCE THROUGH COMBINATION OF PAYMENT TO**
21 **HOUSING DEVELOPER AND PAYMENT OF IN-LIEU FEE.**

22 The sponsor of a development project subject to this ordinance may elect to
23 satisfy its housing requirement by a combination of paying money or contributing land to one
24 or more housing developers under Section 313.5 and paying a partial amount of the in-lieu fee
25 to the ~~Controller~~Treasurer under Section 313.6. In the case of such election, the sponsor must

1 pay a sum such that each gross square foot of net addition of each type of space subject to
2 this ordinance is accounted for in either the payment of a sum or contribution of land to one or
3 more housing developers or the payment of a fee to the ~~Controller~~Treasurer. The housing units
4 constructed by a housing developer must conform to all requirements of this ordinance,
5 including, but not limited to, the proportion that must be affordable to qualifying households as
6 set forth in Section 313.5. All of the requirements of Sections 313.5 and 313.6 shall apply,
7 including the requirements with respect to the timing of issuance of site and building permits
8 and certificates of occupancy for the development project and payment of the in-lieu fee.

9 **SEC. 313.8. TRANSFER OF HOUSING CREDITS.**

10 (a) In determining whether a sponsor is in compliance with this ordinance,
11 the ~~Director of Planning~~ Department or the Commission shall credit against all or part of a
12 housing requirement for any sponsor of any development project credits, which shall be
13 denominated "excess Interim Guidelines credits," obtained by the sponsor which:

14 (1) Have received final approval under the Interim Guidelines as of August
15 18, 1985, but which have not been applied to a development project because the
16 development project has not been approved by the ~~Director of Planning~~ Department or the
17 Commission or which are in excess of those credits required to satisfy the housing
18 requirement under the Interim Guidelines; or

19 (2) Have received preliminary approval prior to August 18, 1985, received
20 final approval within six months of August 18, 1985, and are in excess of those credits
21 required to satisfy the housing requirement under the Interim Guidelines or this ordinance.
22 This six-month period may be extended for a maximum of two six-month periods where,
23 based upon evidence submitted by the sponsor, the ~~Director of Planning~~ Department or
24 Planning Commission determine within six months of August 18, 1985, or within a six-month
25 extension, that (1) there is good cause for an extension or an additional extension, (2) the

1 failure to obtain final approval of credits is beyond the sponsor's immediate control, and (3)
2 the sponsor has made a reasonable effort to obtain final approval of credits.

3 Excess Interim Guideline credits may be applied against a sponsor's housing
4 requirement under this ordinance on the basis of two and three tenths (2.3) excess Interim
5 Guideline credits against one housing unit required to be provided under Section 313.5.

6 Excess Interim Guideline Credits may be applied against a sponsor's housing requirement
7 under this ordinance only for those projects obtaining project authorizations as defined in
8 Planning Code Section 320(h) on or before February 28, 1999. No excess Interim Guideline
9 Credits may be applied against a sponsor's housing requirement for any project authorization
10 issued after that date. The ~~Director of Planning~~ Department shall notify ~~the Director of the~~
11 ~~Mayor's Office of Housing~~ MOH of credits applied to the sponsor's housing requirement under
12 this Section 313.8(a).

13 (b) In making their determination as to whether a sponsor's housing
14 development plan complies with Sections 313.5, 313.6, and 313.7, the ~~Director of Planning~~
15 Department or the Commission shall credit to the sponsor any housing units constructed or in-
16 lieu fee paid in excess of that required to satisfy the housing unit requirement under this
17 ordinance, which shall be denominated "excess credits." The ~~Director of Planning~~ Department
18 or the Commission shall permit the transfer of any excess credits received under this
19 ordinance to be applied to satisfy all or part of a housing requirement for any other
20 development project that is subject to the provisions of this ordinance, and shall notify ~~the~~
21 ~~Director of the Mayor's Office of Housing~~ MOH of such permitted transfer. Each excess credit
22 shall be equivalent to one housing unit as computed under Section 313.5. Excess credits may
23 be obtained only under Section 313.11 or if:

24 (1) They have been obtained after the commencement of construction of
25 housing in compliance with all of the requirements of Section 313.5, the payment of a sum or

1 contribution of land to one or more housing developers in compliance with all of the
2 requirements of Section 313.5, or payment of an in-lieu fee to the ~~Controller~~ Treasurer in
3 compliance with all of the requirements of Section 313.6 or a combination of the above under
4 Section 313.7. Compliance with these sections requires construction of the total number of
5 housing units required, the percentage of such units which must be affordable to qualifying
6 households, and the establishment of a mechanism approved by the ~~Director of Planning~~
7 Department to enforce the requirement that the units constructed will be affordable for 50 years
8 to qualifying households; and

9 (2) The excess credits result from either:

10 (A) Abandonment of the development project that received approval by the
11 Planning Department or the Commission as evidenced by cancellation of the site or building
12 permit or the site or building permit application; or

13 (B) A decrease in the net addition of gross square feet of each type of space
14 subject to this ordinance as a result of Planning Department, Commission, Board of Appeals,
15 Board of Supervisors, or court action taken after:

16 (i) The amount of such net addition of gross square feet of each type of
17 space subject to this ordinance has been determined by the Planning Department or
18 Commission under Section 313.4; and

19 (ii) The sponsor has paid a sum to one or more housing developers and
20 construction of the housing units has commenced under Section 313.5, or the sponsor has
21 paid an in-lieu fee under Section 313.6, or a combination of the above under Section 313.7.

22 Excess credits may be applied against a sponsor's housing requirement under
23 this ordinance only for those applications for a building or site permit filed within three years of
24 the date on which the excess credits are issued. The date on which such excess credits are
25 issued shall be the earlier of the sponsor's abandonment of the development project under

1 which the credits were obtained as evidenced by the cancellation of the site or building permit
2 or the site or building permit application, the commencement of construction of each of the
3 housing units under Section 313.5, or the payment of the in-lieu fee under Section 313.6 with
4 respect to such credits. No excess credits may be applied against a sponsor's housing
5 requirement for any application for a building or site permit filed after that date.

6 (c) If the number of excess credits or excess Interim Guidelines credits held
7 by a sponsor is not sufficient to satisfy the entire housing requirement of that sponsor's
8 development project subject to the provisions of this ordinance, including, but not limited to
9 the requirement that a percentage of the housing units must be affordable to qualifying house-
10 holds, then the balance of the housing requirement shall be satisfied in accordance with the
11 provisions of this ordinance, including the requirement set forth in Section 313.5 that the units
12 constructed must be affordable to qualifying households.

13 (d) Excess credits and excess Interim Guideline credits may be transferred
14 from one sponsor to another only if:

15 (1) The ~~Director of Planning~~ Department has been notified in writing of the
16 proposed transfer of the credits;

17 (2) The ~~Director of Planning~~ Department has determined that the transfer or
18 sponsor has obtained the credits through meeting the requirements of either Subsection (a) or
19 (b) of this Section; and

20 (3) The transfer is made in writing, a true copy of which is provided to the
21 ~~Director of Planning~~ Department.

22 (e) The City makes no warranties that any excess credits or excess Interim
23 Guidelines credits will be marketable during the period in which this ordinance is in effect or
24 thereafter. The City makes no warranties that an applicant possessing excess credits or
25

1 excess Interim Guidelines credits is entitled to Commission approval of a development project
2 subject to this ordinance.

3 **SEC. 313.9. COLLECTION; INTEREST; LIEN PROCEEDINGS.**

4 (a) ~~A sponsor's failure to comply with the requirements of Sections 313.5, 313.6 and~~
5 ~~313.7 shall constitute cause for the City to record a lien against the development project in the sum of~~
6 ~~the in-lieu fee required under this ordinance, as adjusted under Section 313.6. A sponsor's failure to~~
7 ~~comply with the requirements of Sections 313.5, 313.6 and 313.7 shall constitute cause for~~
8 ~~the City to record a lien against the development project in the sum of the in-lieu fee required~~
9 ~~under this ordinance, as adjusted under Section 313.6. The fee required by this ordinance is due~~
10 ~~and payable to the Treasurer prior to issuance of the first building or site permit for the office~~
11 ~~development project. If, for any reason, the fee remains unpaid following issuance of the permit, any~~
12 ~~amount due shall accrue interest at the rate of one and one-half percent per month, or fraction thereof,~~
13 ~~from the date of issuance of the permit until the date of final payment.~~

14 (b) ~~If, for any reason, the fee imposed pursuant to this ordinance remains unpaid~~
15 ~~following issuance of the permit, the The Director of Planning Treasurer shall initiate proceedings in~~
16 ~~accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire~~
17 ~~unpaid balance of the fee, including interest, a lien against all parcels used for the development~~
18 ~~project. to impose the lien in accordance with the procedures set forth in Chapter 10, Article XX, of the~~
19 ~~San Francisco Administrative Code, and shall send all notices required by that Article to the~~
20 owner of the property as well as the sponsor. The ~~Director~~ Treasurer shall also prepare a
21 preliminary report notifying the sponsor of a hearing to confirm such report by the Board of
22 Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall
23 contain the sponsor's name, a description of the sponsor's development project, a description
24 of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for
25 the current year, a description of the alleged violation of this ordinance, and shall fix a time,

1 date, and place for hearing. The *Director of Planning Treasurer* shall cause this report to be
2 mailed to the sponsor and each owner of record of the parcels of real property subject to lien.
3 Except for the release of lien recording fee authorized by Administrative Code Section 10.237,
4 all sums collected by the Tax Collector pursuant to this ordinance shall be held in trust by the
5 Treasurer and deposited in the Citywide Affordable Housing Fund established in Section
6 313.12.

7 (c) Any notice required to be given to a sponsor or owner shall be sufficiently
8 given or served upon the sponsor or owner for all purposes hereunder if personally served
9 upon the sponsor or owner or if deposited, postage prepaid, in a post office letterbox
10 addressed in the name of the sponsor or owner at the official address of the sponsor or owner
11 maintained by the Tax Collector for the mailing of tax bills or, if no such address is available,
12 to the sponsor at the address of the development project, and to the applicant for the site or
13 building permit at the address on the permit application.

14 **SEC. 313.10. IN-LIEU FEE REFUND WHEN BUILDING PERMIT EXPIRES PRIOR**
15 **TO COMPLETION OF WORK AND COMMENCEMENT OF OCCUPANCY.**

16 In the event a building permit expires prior to completion of the work on and
17 commencement of occupancy of a development project so that it will be necessary to obtain a
18 new permit to carry out any development, the obligation to comply with this ordinance shall be
19 cancelled, and any in-lieu fee previously paid to the ~~Controller~~ *Treasurer* shall be refunded. If
20 and when the sponsor applies for a new permit, the procedures set forth in this ordinance
21 regarding construction of housing or payment of the in-lieu fee shall be followed.

22 Section 3. The San Francisco Planning Code is hereby amended by amending
23 Sections 314.1, 314.4 and 314.5314.4 to read as follows:

24 **SEC. 314.1. DEFINITIONS.**

25 The following definitions shall govern interpretation of this Section:

1 (a) "Child-care facility" shall mean a child day-care facility as defined in
2 California Health and Safety Code Section 1596.750.

3 (b) "Child care provider" shall mean a provider as defined in California Health
4 and Safety Code Section 1596.791.

5 (c) "Commission" shall mean the City Planning Commission.

6 (d) "DBI" shall mean the Department of Building Inspection.

7 (e) "Department" shall mean the Department of City Planning.

8 ~~(e) "Director" shall mean the Director of City Planning or his or her designee,~~
9 ~~including other City agencies or departments.~~

10 (f) "First certificate of occupancy" shall mean either a temporary certificate of
11 occupancy or a Certificate of Final Completion and Occupancy, as defined in San Francisco
12 Building Code Section 109, whichever is issued first.

13 (g) "Hotel" shall mean a building containing six or more guest rooms as
14 defined in San Francisco Housing Code Section 401 intended or designed to be used, or
15 which are used, rented, or hired out to be occupied, or which are occupied for sleeping
16 purposes and dwelling purposes by guests, whether rent is paid in money, goods, or services,
17 including motels as defined in San Francisco Housing Code Section 401.

18 (h) "Hotel use" shall mean space within a structure or portion thereof
19 intended or primarily suitable for the operation of a hotel, including all office and other uses
20 accessory to the renting of guest rooms, but excluding retail uses and office uses not
21 accessory to the hotel use.

22 (i) "Household of low income" shall mean a household composed of one or
23 more persons with a combined annual net income for all adult members which does not
24 exceed the qualifying limit for a lower-income family of a size equivalent to the number of
25

1 persons residing in such household, as set forth for the County of San Francisco in California
2 Administrative Code Section 6932.

3 (j) "Household of moderate income" shall mean a household composed of
4 one or more persons with a combined annual net income for all adult members which does
5 not exceed the qualifying limit for a median-income family of a size equivalent to the number
6 of persons residing in such household, as set forth for the County of San Francisco in
7 California Administrative Code Section 6932.

8 (k) "Licensed child-care facility" shall mean a child-care facility which has been
9 issued a valid license by the California Department of Social Services pursuant to California
10 Health and Safety Code Sections 1596.80—1596.875, 1596.95—1597.09, or 1597.30—
11 1597.61.

12 (l) "Net addition of gross square feet of hotel space" shall mean gross floor
13 area as defined in Planning Code Section 102.9 to be occupied by, or primarily serving, hotel
14 use, less the gross floor area in any structure demolished or rehabilitated as part of the
15 proposed hotel development project space used primarily and continuously for office or hotel
16 use and not accessory to any use other than office or hotel use for five years prior to Planning
17 Commission approval of the hotel development project subject to this Section, or for the life of
18 the structure demolished or rehabilitated, whichever is shorter.

19 (m) "Net addition of gross square feet of office space" shall mean gross floor
20 area as defined in Planning Code Section 102.9 to be occupied by, or primarily serving, office
21 use, less the gross floor area in any structure demolished or rehabilitated as part of the
22 proposed office development project space used primarily and continuously for office or hotel
23 use and not accessory to any use other than office or hotel use for five years prior to Planning
24 Commission approval of the office development project subject to this Section, or for the life of
25 the structure demolished or rehabilitated, whichever is shorter.

1 (n) “Nonprofit child-care provider” shall mean a child-care provider that is an
2 organization organized and operated for nonprofit purposes within the provisions of California
3 Revenue and Taxation Code Sections 23701—23710, inclusive, as demonstrated by a written
4 determination from the California Franchise Tax Board exempting the organization from taxes
5 under Revenue and Taxation Code Section 23701.

6 (o) “Nonprofit organization” shall mean an organization organized and
7 operated for nonprofit purposes within the provisions of California Revenue and Taxation
8 Code Sections 23701—23710, inclusive, as demonstrated by a written determination from the
9 California Franchise Tax Board exempting the organization from taxes under Revenue and
10 Taxation Code Section 23701.

11 (p) “Office development project” shall mean any new construction, addition,
12 extension, conversion or enlargement, or combination thereof, of an existing structure which
13 includes any gross square feet of office space.

14 (q) “Office use” shall mean space within a structure or portion thereof
15 intended or primarily suitable for occupancy by persons or entities which perform, provide for
16 their own benefit, or provide to others at that location services including, but not limited to, the
17 following: Professional, banking, insurance, management, consulting, technical, sales and
18 design, or the office functions of manufacturing and warehousing businesses, but excluding
19 retail uses; repair; any business characterized by the physical transfer of tangible goods to
20 customers on the premises; wholesale shipping, receiving and storage; ~~space primarily used~~
21 ~~for, or where the most recent use was primarily for, the display of goods, wares, or~~
22 ~~merchandise, including but not limited to: (1) showrooms, design showrooms, and design~~
23 ~~showcases, (2) space displaying goods, wares, and merchandise either as samples or for~~
24 ~~sale, (3) space in which the occupants negotiate sales transactions, (4) display space in~~
25 ~~buildings that also contain office use, and (5) space actually used for display of goods, wares,~~

1 ~~and merchandise even if intended and primarily suitable for offices; *design showcases or any*~~
2 ~~*other space intended and primarily suitable for display of goods*~~ design showcases or any other
3 space intended and primarily suitable for display of goods; and child-care facilities. This
4 definition shall include all uses encompassed within the meaning of Planning Code Section
5 219.

6 (r) "Retail use" shall mean space within any structure or portion thereof
7 intended or primarily suitable for occupancy by persons or entities which supply commodities
8 to customers on the premises including, but not limited to, stores, shops, restaurants, bars,
9 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220
10 through 225, and also including all space accessory to such retail use.

11 (s) "Sponsor" shall mean an applicant seeking approval for construction of an
12 office or hotel development project subject to this Section and such applicant's successors
13 and assigns.

14 **SEC. 314.4. IMPOSITION OF CHILD CARE REQUIREMENT.**

15 (a)(1) The Department or the Commission shall impose conditions on the
16 approval of building or site permit applications for office or hotel development projects covered
17 by this Section in order to mitigate the impact on the availability of child-care facilities which
18 will be caused by the employees attracted to the proposed development project. The
19 conditions shall require that the sponsor construct or provide a child-care facility on or near
20 the site of the development project, either singly or in conjunction with the sponsors of other
21 office or hotel development projects, or arrange with a nonprofit organization to provide a
22 child-care facility at a location within the City, or pay an in-lieu fee to the City *Controller*
23 *Treasurer* which shall thereafter be used exclusively to foster the expansion of and ease
24 access to child-care facilities affordable to households of low or moderate income.

25

1 (2) Prior to either the Department's or the Commission's approval of a
2 building or site permit for a development project subject to this Section, the Department shall
3 issue a notice complying with Planning Code Section 306.3 setting forth its initial
4 determination of the net addition of gross square feet of office or hotel space subject to this
5 Section.

6 (3) Any person may appeal the initial determination by delivering an appeal
7 in writing to the Department within 15 days of such notice. If the initial determination is not
8 appealed within the time allotted, the initial determination shall become a final determination.
9 If the initial determination is appealed, the Commission shall schedule a public hearing prior to
10 the approval of the development project by the Commission or the Department to determine
11 the net addition of gross square feet of office or hotel space subject to this Section. The public
12 hearing may be scheduled separately or simultaneously with a hearing under City Planning
13 Code Sections 139, 306.2, 309(h), ~~or~~ 313.4, 315.3 or a Discretionary Review hearing under
14 San Francisco ~~Municipal~~ Business and Tax Regulations Code ~~[Part III]~~ Section 26. The
15 Commission shall make a final determination of the net addition of gross square feet at the
16 hearing.

17 (4) The final determination of the net addition of gross square feet of office or
18 hotel space subject to this Section shall be set forth in the conditions of approval relating to
19 the child-care requirement in any building or site permit application approved by the
20 Department or the Commission. *The Department shall notify the Treasurer of the final*
21 *determination of the net addition of gross square feet of office or hotel space subject to this ordinance*
22 *within 30 days of the date of the final determination.* ~~The Director~~ Department shall notify the
23 Treasurer and Director of the Department of Building Inspections DBI that the development project
24 is subject to this Section ~~at~~ prior to the time the Department or the Commission approves the
25 permit application.

1 (b)(1) The sponsor of a development project subject to this Section may elect to
 2 provide a child-care facility on the premises of the development project for the life of the
 3 project to meet the requirements of this Section. The sponsor shall, prior to the issuance of
 4 the first certificate of occupancy by ~~the Director of the Department of Building Inspections~~ DBI for
 5 the development project, provide proof to the Treasurer and the Director of Planning Department
 6 that:

7 (A) A space on the premises of the development project has been provided
 8 to a nonprofit child-care provider without charge for rent, utilities, property taxes, building
 9 services, repairs, or any other charges of any nature, as evidenced by a lease and an
 10 operating agreement between the sponsor and the provider with minimum terms of three
 11 years;

12 (B) The child-care facility is a licensed child-care facility;

13 (C) The child-care facility has a minimum gross floor area of 3,000 square
 14 feet or an area determined according to the following formula, whichever is greater:

<i>Net Addition Gross Sq. Ft. Hotel Space</i>	X	\$.01	=	<i>Sq. Ft. of Child Care Facility</i>
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17 In the event that the net addition of gross square feet of office or hotel of the
 18 development project is less than 300,000 square feet, the child-care facility may have a
 19 minimum gross floor area of 2,000 square feet or the area determined according to the above
 20 formula, whichever is greater; and

21 (D) A notice of special restriction has been recorded stating that the
 22 development project is subject to this Section and is in compliance herewith by providing a
 23 child-care facility on the premises.

24 (2) The sponsor of a development project subject to this Section in
 25 conjunction with the sponsors of one or more other development projects subject to this

1 Section located within ½ mile of one another may elect to provide a single child-care facility on
 2 the premises of one of their development projects for the life of the project to meet the
 3 requirements of this Section. The sponsors shall, prior to the issuance of the first certificate of
 4 occupancy by ~~the Director of the Department of Building Inspections~~ DBI for any one of the
 5 development projects complying with this part, provide proof to the Treasurer and the Director of
 6 Planning Department that:

7 (A) A space on the premises of one of their development projects has been
 8 provided to a nonprofit child-care provider without charge for rent, utilities, property taxes,
 9 building services, repairs, or any other charges of any nature, as evidenced by a lease and an
 10 operating agreement between the sponsor in whose project the facility will be located and the
 11 provider with minimum terms of three years;

12 (B) The child-care facility is a licensed child-care facility;

13 (C) The child-care facility has a minimum gross floor area of 3,000 square
 14 feet or an area determined according to the following formula, whichever is greater:

<i>Combined net add. Gross. Sq. Ft. Office Or hotel space of All participating Dev. Projects</i>	X	\$.01	=	<i>Sq. Ft. of Child Care Facility</i>
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15 In the event that the net addition of gross square feet of office or hotel space of all
 16 participating projects is less than 300,000 square feet, the child-care facility may have a
 17 minimum gross floor area of 2,000 square feet or the area determined according to the above
 18 formula, whichever is greater; and

19 (D) A written agreement binding each of the participating project sponsors
 20 guaranteeing that the child-care facility will be provided for the life of the development project
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1 in which it is located, or for as long as there is a demonstrated demand, as determined under
 2 Subsection (h) of this Section 314.4, has been executed and recorded in the chain of title of
 3 each participating building.

4 (3) The sponsor of a development project subject to this Section, either
 5 singly or in conjunction with the sponsors of one or more other development projects subject
 6 to this Section located within 1/2 mile of one another, may elect to provide a single child-care
 7 facility to be located within one mile of the development project(s) to meet the requirements of
 8 this Section. Subject to the discretion of the ~~Director~~Department, the child-care facility shall be
 9 located so that it is reasonably accessible to public transportation or transportation provided
 10 by the sponsor(s). The sponsor(s) shall, prior to the issuance of the first certificate of
 11 occupancy by ~~the Director of the Department of Building Inspections~~DBI for any development
 12 project complying with this part, provide proof to the Treasurer and the Director of Planning
 13 Department that:

14 (A) A space has been provided to a nonprofit child-care provider without
 15 charge for rent, utilities, property taxes, building services, repairs, or any other charges of any
 16 nature, as evidenced by a lease or sublease and an operating agreement between the
 17 sponsor(s) and the provider with minimum terms of three years;

18 (B) The child-care facility is a licensed child-care facility;

19 (C) The child-care facility has a minimum gross floor area of 3,000 square
 20 feet or an area determined according to the following formula, whichever is greater:

21 Combined net 22 add. 23 Gross. Sq. Ft. 24 Office 25 Or hotel space of All participating Dev. Projects	X	\$.01	=	Sq. Ft. of Child Care Facility
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1 In the event that the net addition of gross square feet of office or hotel space of all
 2 participating projects is less than 300,000 square feet, the child-care facility may have a
 3 minimum gross floor area of 2,000 square feet or the area determined according to the above
 4 formula, whichever is greater; and

5 (D) A written agreement binding each of the participating project sponsors,
 6 with a term of 20 years from the date of issuance of the first certificate of occupancy for any
 7 development project complying with this part, guaranteeing that a child-care facility will be
 8 leased or subleased to one or more nonprofit child-care providers for as long as there is a
 9 demonstrated demand under Subsection (h) of this Section 314.4 has been executed and
 10 recorded in the chain of title of each participating building.

11 (4) The sponsor of a development project subject to this Section may elect to
 12 pay a fee in lieu of providing a child-care facility. The fee shall be computed as follows:

<i>Net Addition Gross Sq. Ft. Office or Hotel Space</i>	X	\$1.00	=	<i>Total Fee</i>
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13 Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of the
 14 sponsor, the ~~Controller~~ Treasurer shall issue a certification that the fee has been paid. The
 15 sponsor shall present such certification to the ~~Director~~ Department prior to the issuance by ~~the~~
 16 ~~Director of the Department of Building Inspections~~ DBI of the first ~~certificate of occupancy~~ building
 17 ~~or site permit~~ certificate of occupancy for the development project.

18 (5) The sponsor of a development project subject to this Section may elect to
 19 satisfy its child-care requirement by combining payment of an in-lieu fee to the Child Care
 20 Capital Fund with construction of a child-care facility on the premises or providing child-care
 21 facilities near the premises, either singly or in conjunction with other sponsors. The child-care
 22 facility to be constructed on-site or provided near-site under this election shall be subject to all
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1 of the requirements of whichever of Parts (b)(1), (2) and (3) of this Section 314.4 is applicable,
 2 and shall have a minimum floor area of 3,000 gross square feet. If the net addition of gross
 3 square feet of office or hotel space of all participating projects is less than 300,000 square
 4 feet, the minimum gross floor area of the facility shall be 2,000 square feet. The in-lieu fee to
 5 be paid under this election shall be subject to all of the requirements of Part (b)(4) of this
 6 Section 314.4 and shall be determined by the Commission according to the following formula:

Net. Add gross sq. ft. space subject project	-	[Net. add. gross Sq. Ft. Space <u>Subject Project</u> Net. add grossSq. Ft. Space all participating projects	X	Sq. Ft. Child-care facility	X	100	X	\$1.00]	=	Total Fee for Subject Project
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12 (6) The sponsor of a development project subject to this Section may elect to
 13 satisfy its child-care requirement by entering into an arrangement pursuant to which a
 14 nonprofit organization will provide a child-care facility at a site within the City. The sponsor
 15 shall, prior to the issuance of the first certificate of occupancy by ~~the Director of the Department~~
 16 ~~of Building Inspection~~ DBI for the development project, provide proof to the Treasurer and the
 17 Department Director of Planning that:

18 (A) A space for a child-care facility has been provided by the nonprofit
 19 organization, either for its own use if the organization will provide child-care services, or to a
 20 nonprofit child-care provider without charge for rent, utilities, property taxes, building services,
 21 repairs, or any other charges of any nature, as evidenced by a lease or sublease and an
 22 operating agreement between the nonprofit organization and the provider with minimum terms
 23 of three years;

24 (B) The child-care facility is a licensed child-care facility;

25

1 (C) The child-care facility has a minimum gross floor area of 3,000 square
 2 feet or an area determined according to-the following formula, whichever is greater:

<i>Net Addition Gross Sq. Ft. Office or Hotel Space</i>	X	\$.01	=	<i>Sq. Ft. of Child- care facility</i>
---	---	-------	---	--

3
 4
 5 In the event that the net addition of gross square feet of office or hotel space is less
 6 than 300,000 square feet, the child-care facility may have a minimum gross floor of 2,000
 7 square feet or the area determined according to the above formula, whichever is greater;

8 (D) The nonprofit organization has executed and recorded a binding written
 9 agreement, with a term of 20 years from the date of issuance of the first certificate of
 10 occupancy for the development project, pursuant to which the nonprofit organization
 11 guarantees that it will operate a child-care facility or it will lease or sublease a child-care
 12 facility to one or more nonprofit child-care providers for as long as there is a demonstrated
 13 need under Subsection (h) of this Section 314.4, and that it will comply with all of the
 14 requirements imposed on the nonprofit organization under this Paragraph (b)(6) and imposed
 15 on a sponsor under Subsections (g), (h) and (i) of Section 314.4.

16 (E) To support the provision of a child-care facility in accordance with the
 17 foregoing requirements, the sponsor has paid to the nonprofit organization a sum which
 18 equals or exceeds the amount of the in-lieu fee which would have been applicable to the
 19 project under Section 314.4(b)(4).

20 (F) The Department of Children, Youth and Their Families has determined
 21 that the proposed child-care facility will help meet the needs identified in the San Francisco
 22 Child Care Needs Assessment and will be consistent with the City Wide Child Care Plan;
 23 provided, however, that this Paragraph (F) shall not apply to any office or hotel development
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1 project approved by the Planning Department or the Planning Commission prior to December
2 31, 1999.

3 Upon compliance with the requirements of this Part, the nonprofit organization
4 shall enjoy all of the rights and be subject to all of the obligations of the sponsor, and the
5 sponsor shall have no further rights or obligations under this Section.

6 ~~(7) — Where the sponsor initially elects to comply with the requirements of this~~
7 ~~Section by any means other than solely paying the in-lieu fee under Section 314.4(b)(4), the~~
8 ~~sponsor shall make that election not later than the date on which the in-lieu fee would~~
9 ~~otherwise be due. If, subsequent to making that election and issuance of the initial site or~~
10 ~~building permit for the project, the sponsor decides instead to pay any part of the sponsor's~~
11 ~~obligation in the form of the in-lieu fee, the sponsor shall be liable for the amount of the in-lieu~~
12 ~~fee plus interest at the rate of one and one-half per cent per month or fraction thereof from the~~
13 ~~date of the sponsor's initial election until the date the full amount due is paid.~~

14 ~~(c) If the sponsor is liable for an in-lieu fee pursuant to this section, such fee shall be~~
15 ~~due prior to issuance of the first site or building permit certificate of occupancy for the project.~~
16 ~~Upon payment of the fee in full to the Treasurer and upon request of the sponsor, the Treasurer shall~~
17 ~~issue a certification that the fee has been paid. The sponsor shall present such certification to DBI~~
18 ~~prior to the issuance by DBI of the first site or building permit certificate of occupancy for the~~
19 ~~development project. The Director of the Department of Building Inspections shall provide notice in~~
20 ~~writing to the Director of Planning at least five business days prior to issuing the first certificate of~~
21 ~~occupancy for any development project subject to this Section. If the Director of Planning notifies the~~
22 ~~Director of the Department of Building Inspections within such time that the sponsor has not complied~~
23 ~~with the provisions of this Section, the Director of the Department of Building Inspections DBI shall~~
24 ~~not issue the site or building permit certificate of occupancy without proof of payment of the fee~~
25 ~~from the Treasurer deny any and all certificates of occupancy. If the Director of Planning notifies the~~

1 ~~Director of the Department of Building Inspections that the sponsor has complied with this Section or~~
2 ~~fails to respond within five business days, a certificate of occupancy shall not be disapproved pursuant~~
3 ~~to this Section.~~ Any failure of the Treasurer, DBI, Director of the Department of Building Inspections
4 or the Director of Planning Department to give any notice under this Subsection shall not relieve
5 a sponsor from compliance with this Section. ~~Where DBI inadvertently issues a site or~~
6 ~~building permit without payment of the fee, DBI shall not issue any certificate of occupancy for~~
7 ~~the project without notification from the Treasurer that the fee required by this Section has~~
8 ~~been paid.~~ The procedure set forth in this Subsection is not intended to preclude enforcement of the
9 provisions of this section under any other section of this Code, or other authority under the laws of the
10 State of California.

11 (d) In the event that the Department or the Commission takes action affecting
12 any development project subject to this Section and such action is thereafter modified,
13 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals,
14 the Board of Supervisors, or by court action, the permit application for such office
15 development project shall be remanded to the Department or Commission ~~for a hearing~~ within
16 60 days ~~of following~~ the date on which such action is final to determine whether the proposed
17 project has been changed in a manner which affects the area of the child-care facility or the
18 amount of the in-lieu fee to be provided under this Section 314.4 and, if so, the Department or
19 the Commission shall revise the child-care requirement imposed on the permit application in
20 compliance with this Section, and shall promptly notify the Treasurer and DBI of that revision.

21 (e) The sponsor shall supply all information to the Treasurer, the Department,
22 and the Commission necessary to make a determination as to the applicability of this Section
23 and the number of gross square feet of office or hotel space subject to this Section.

24 ///

25 ///

1 (f) Within nine months of the effective date of this Section, the Commission
2 shall, after public notice and a hearing pursuant to Charter Section ~~3.500~~ 4.104, adopt rules
3 and regulations by which compliance with this Subsection shall be determined.

4 (g) In the event that a sponsor elects to satisfy its child-care requirement
5 under Section 314(b)(1), (2), (3) or (5) by providing an on-site or near-site child-care facility,
6 the sponsor shall submit a report to the ~~Director~~ Department in January of each year for the life
7 of the child-care facility. The report shall have attached thereto a copy of the license issued by
8 the California Department of Social Services permitting operation of the child-care facility, and
9 shall state:

10 (1) The address of the child-care facility;

11 (2) The name and address of the child-care provider operating the facility;

12 (3) The size of the center in terms of floor area;

13 (4) The capacity of the child-care facility in terms of the maximum number of
14 children for which the facility is authorized to care under the license;

15 (5) The number and ages of children cared for at the facility during the
16 previous year; and

17 (6) The fees charged parents for use of the facility during the previous year.

18 (h) In the event that a sponsor elects to satisfy its child-care requirement
19 under Paragraphs 314.4(b)(1), (2), (3) or (5) by providing an on-site or near-site child-care
20 facility, or under Paragraph 314.4(b)(6) by agreement with a nonprofit organization, the
21 sponsor, or in the case of a facility created pursuant to Paragraph 314.4(b)(6) the nonprofit
22 organization, may apply to the ~~Director~~ Department to eliminate the facility or to reduce the
23 floor area of the facility in any amount, providing, however, that the gross floor area of a
24 reduced facility is at least 2,000 square feet. The ~~Director~~ Department shall schedule a public
25 hearing on any such application before the Commission and provide notice pursuant to City

1 Planning Code Section 306.3(a) at least two months prior to the hearing. The application may
 2 be granted only where the sponsor has demonstrated that there is insufficient demand for the
 3 amount of floor area then devoted to the on-site or near-site child-care facility. The actual
 4 reduction in floor area or elimination of the child-care facility shall not be permitted in any case
 5 until six months after the application is granted. Such application may be made only five
 6 years or more after the issuance of the first certificate of occupancy for the project. Prior to
 7 the reduction in floor area or elimination of the child care facility, the sponsor shall pay an in-
 8 lieu fee to the City's ~~Controller~~ Treasurer to be computed as follows:

$$\left(\frac{[20 - \text{No. of years since issuance of first cert. occ.}]}{20} \times \left[\text{Net reduction gross sq. ft. child care facility} \right] \times (\$100) = \text{Total Fee} \right)$$

13 Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of the
 14 sponsor, the ~~Controller~~ Treasurer shall issue a certification that the fee has been paid. The
 15 sponsor shall present such certification to the Director prior to the reduction in the floor area or
 16 elimination of the child care facility.

17 (i) The child care provider operating any child care facility pursuant to Sections
 18 314.4(b)(1), (2), (3) or (5) shall reserve at least 10 percent of the maximum capacity of the
 19 child care facility as determined by the license for the facility issued by the California
 20 Department of Social Services to be affordable to children of households of low income. The
 21 ~~Director~~ Department shall adopt rules and regulations to determine the rates to be charged to
 22 such regulations under Section 314.5.

23 (j) The fee required by this ordinance is due and payable to the Treasurer prior to issuance
 24 of the first building or site permit certificate of occupancy for the office development project.
 25 Except in the case of a reduction in space of the child care facility pursuant to Subsection (h), if the fee

1 remains unpaid following issuance of the permit certificate, any amount due shall accrue interest at
2 the rate of one and one-half percent per month, or fraction thereof, from the date of issuance of the
3 permit certificate until the date of final payment. Where the amount due is as a result of a reduction in
4 space of the child care facility pursuant to subsection (h), such interest shall accrue from the date on
5 which the available space is reduced until the date of final payment.

6 ~~(k)~~ — In the event a building permit expires prior to completion of the work on and
7 commencement of occupancy of a development project so that it will be necessary to obtain a
8 new permit to carry out any development, the obligation to comply with this ordinance shall be
9 cancelled, and any in-lieu fee previously paid to the Treasurer shall be refunded. If and when
10 the sponsor applies for a new permit, the procedures set forth in this ordinance regarding
11 provision of child care facilities or payment of the in-lieu fee shall be followed.

12 ~~(l)~~ ~~(k)~~ In the event that a development project for which an in-lieu fee imposed under this
13 Section has been fully paid is demolished or converted to a use or uses not subject to this ordinance
14 prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion of the
15 amount of an in-lieu fee paid. The portion of the fee refunded shall be determined on a pro rata basis
16 according to the ratio of the remaining useful life of the project at the time of demolition or conversion
17 in relation to its total useful life. For purposes of this ordinance, the useful life of a development project
18 shall be 50 years.

19 ~~(m)~~ ~~(l)~~ (1) A sponsor's failure to pay the fee imposed pursuant to this Section shall constitute
20 cause for the City to record a lien against the development project in the sum of the in-lieu fee required
21 under this ordinance, as adjusted under this Section.

22 (2) If, for any reason, the fee imposed pursuant to this ordinance remains unpaid
23 following issuance of the permit certificate, the Treasurer shall initiate proceedings in accordance
24 with the procedures set forth in Article XX of Chapter 10, of the San Francisco Administrative Code to
25 make the entire unpaid balance of the fee, including interest, a lien against all parcels used for the

1 development project. The Treasurer shall send all notices required by that Article to the owner of the
2 property as well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the
3 sponsor of a hearing to confirm such report by the Board of Supervisors at least 10 days before the
4 date of the hearing. The report to the sponsor shall contain the sponsor's name, a description of the
5 sponsor's development project, a description of the parcels of real property to be encumbered as set
6 forth in the Assessor's Map Books for the current year, a description of the alleged violation of this
7 ordinance, and shall fix a time, date, and place for hearing. The Treasurer shall cause this report to be
8 mailed to the sponsor and each owner of record of the parcels of real property subject to lien. Except
9 for the release of lien recording fee authorize by Administrative Code Section 10.237, all sums
10 collected by the Tax Collector pursuant to this ordinance shall be held in trust by the Treasurer and
11 deposited in the Child Care Capital Fund established in Section 314.5.

12 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given or
13 served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or
14 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor
15 or owner at the official address of the sponsor or owner maintained by the Tax Collector for the
16 mailing of tax bills or, if no such address is available, to the sponsor at the address of the development
17 project, and to the applicant for the site or building permit at the address on the permit application.

18 **SEC. 314.5. CHILD CARE CAPITAL FUND.**

19 There is hereby established a separate fund set aside for a special purpose
20 called the Child Care Capital Fund ("Fund"). All monies contributed pursuant to the provisions
21 of this Section, and all other monies from the City's General Fund or from contributions from
22 third parties designated for the fund shall be deposited in the fund. For a period of three years
23 from the date of final adoption of this ordinance, no more than 25 percent of the money
24 deposited in the fund shall be paid to providers operating child care facilities subject to
25 Sections 314.4(b)(1), (2), (3) and (5) to reduce the cost of providing affordable child care

1 services to children from households of low income as required in Section 314.4(i). The
2 remaining monies deposited in the fund during such three-year period, and all monies in the
3 fund following expiration of such three-year period, shall be used solely to increase and/or
4 improve the supply of child care facilities affordable to households of low and moderate
5 income; except that monies from the fund ~~may~~ shall be used by the Director to fund in a timely
6 manner any report(s) required a nexus study to demonstrate the relationship between ~~office~~
7 ~~and hotel~~ commercial development projects and child care demand as described in San
8 Francisco Planning Code Section 314.4. In the event that no child care facility is in operation
9 under Sections 314.4(b)(1), (2), (3) or (5) during such three-year period, the maximum of 25
10 percent of the fund reserved for households of low income shall be spent solely to increase
11 and/or improve the supply of child care facilities affordable to households of low and moderate
12 income. The fund shall be administered by the Director, who shall adopt rules and regulations
13 governing the disposition of the fund which are consistent with this Section. Such rules and
14 regulations shall be subject to approval by resolution of the Board of Supervisors.

15 Section 4. The San Francisco Planning Code is hereby amended by amending
16 Sections 315.3 and 315.6 to read as follows:

17 **Section 315.3: APPLICATION**

18 (a) This Ordinance shall apply to

19 (1) all applications for a building permit or a site permit filed with the Department of
20 Building Inspection or the Planning Department on or after June 18, 2001 for housing projects
21 which:

22 (A) consist of ten or more units; and

23 (B) do not require Planning Commission approval as a conditional use or planned
24 unit development; and

25

1 (C) have a project site which was optioned or acquired or an environmental
2 evaluation application that was filed after June 18, 2001.

3 (2) all applications for a conditional use or planned unit development permit filed
4 with the Planning Department on or after June 18, 2001 for housing projects which:

5 (A) consist of ten or more units; and

6 (B) require Planning Commission approval as a conditional use or planned unit
7 development.

8 (3) all applications for a building permit or a site permit filed with the Planning
9 Department or the Building Department on or after June 18, 2001 for housing projects which:

10 (A) consist of ten or more units; and

11 (B) consist of live/work units as defined by Planning Code Section 102.13.

12 (4) housing projects which require Planning Commission approval of replacement
13 housing destroyed by earthquake, fire or natural disaster only where the destroyed housing
14 included units restricted under the Residential Inclusionary Housing Program or the City's
15 predecessor inclusionary housing policy, condominium conversion requirements, or other
16 affordable housing program.

17 (b) This Ordinance shall not apply to:

18 (1) that portion of a housing project located on property owned by the United States
19 or any of its agencies or leased by the United States or any of its agencies for a period in
20 excess of 50 years, with the exception of such property not used exclusively for a
21 governmental purpose;

22 (2) that portion of a housing project located on property owned by the State of
23 California or any of its agencies, with the exception of such property not used exclusively for a
24 governmental or educational purpose; or

25

1 (3) that portion of a housing project located on property under the jurisdiction of the
2 San Francisco Redevelopment Agency or the Port of San Francisco where the
3 application of this Ordinance is prohibited by California or local law;

4 (4) that portion of a housing project for which a project applicant can demonstrate
5 that an impact fee under the Jobs-Housing Linkage Program, commencing with
6 Planning Code Section 313, has been paid.

7 (c) Waiver or Reduction:

8 (1) A project applicant of any project subject to the requirements in this Program
9 may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the
10 requirements based upon the absence of any reasonable relationship or nexus between the
11 impact of development and either the amount of the fee charged or the inclusionary
12 requirement.

13 (2) A project applicant subject to the requirements of this Program who has
14 received an approved building permit, conditional use permit or similar discretionary approval
15 and who submits a new or revised building permit, conditional use permit or similar
16 discretionary approval for the same property may appeal for a reduction, adjustment or waiver
17 of the requirements with respect to the number of lots or square footage of construction
18 previously approved.

19 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no
20 later than 15 days after the date the Planning Department sends notice to the project
21 applicant of the number of affordable units required as provided in Section 315.4(a) and
22 315.5(a). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,
23 reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing
24 within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting
25 substantial evidence to support the appeal including comparable technical information to

1 support appellant’s position. The decision of the Board shall be by a simple majority vote and
2 shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the
3 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary
4 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall
5 promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.

6 (d) Except for projects listed in subsection "b" of this Section 315.3, the Planning
7 Commission's Guidelines for Application of San Francisco's Inclusionary Affordable Housing
8 Policy shall apply, where applicable, to housing projects not otherwise covered by this
9 Ordinance because of the application dates set forth in Section 315.3(a),(b, and (c).

10 **Section 315.6: COMPLIANCE THROUGH IN LIEU FEE**

11 If the project applicant elects, pursuant to Section 315.4(e) 2 that the project applicant will pay
12 an in-lieu fee to satisfy the requirements of this Program, the project applicant shall meet the
13 following requirements:

14 (a) By paying an in lieu fee to the ~~Controller~~ Treasurer for use by the Mayor’s Office
15 of Housing for the purpose of constructing at an alternate site the type of housing required by
16 Section 315.5 within the City and County of San Francisco.

17 (b) The amount of the fee which may be paid by the project applicant subject to this
18 ordinance in lieu of developing and providing housing required by Section 315.4 shall be
19 determined by Mayor’s Office of Housing (“MOH”) utilizing the following factors:

20 (1) The number of units required by Section 315.5 if the project applicant were to
21 elect to meet the requirements of this section by off-site housing development.

22 (2) The affordability gap as identified in the “Jobs Housing Nexus Analysis”
23 prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or
24 Maximum Purchase Price for the equivalent unit sizes.

1 (3) Annual adjustments to the affordability gap based upon the percentage increase
2 or decrease in the Average Area Purchase Price Safe Harbor Limitations for New Single
3 Family Residences for the San Francisco Primary Metropolitan Statistical (“PMSA”)
4 established by the Internal Revenue Service (“IRS”) since January 1st of the previous year;
5 provided, however that in the event that said percentage increase exceeds 20 percent, the in-
6 lieu fee shall be increased by 20 percent, and the difference between the percentage increase
7 in the Average Area Purchase Price and 20 percent shall be carried over and added to the in-
8 lieu fee adjustment for the following calendar year. In the event that the IRS does not adjust
9 the above figure within 14 months, the Mayor's Office of Housing shall authorize and certify a
10 study for adjusting the last published IRS figure to be effective until IRS revises the figure.

11 (c) Within 30 days of determining the amount of the fee to be paid by the applicant, MOH
12 shall transmit the amount of the fee to the Treasurer. Prior to the issuance by ~~the Director of~~
13 ~~Building Inspection DBI~~ of the first site or building permit for the project applicant, the project
14 applicant must notify the ~~Director of Planning Department~~ and ~~the Director of the Mayor's Office~~
15 ~~of Housing MOH~~ in writing that it has paid in full the sum required to the ~~Controller~~Treasurer. If
16 the project applicant fails by the applicable date to demonstrate to the ~~Director of Planning~~
17 ~~Department~~ that the project applicant has paid the applicable sum in full to the
18 ~~Controller~~Treasurer, ~~the Director of Building Inspection DBI~~ shall deny any and all site or building
19 permits or certificates of occupancy for the development project until the ~~Director of Planning~~
20 ~~Department~~ notifies ~~the Director of Building Inspection DBI~~ and the ~~Director of the Mayor's Office of~~
21 ~~Housing MOH~~ that such payment has been made.

22 (d) Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of
23 the project applicant, the ~~Controller~~ Treasurer shall issue a certification that the fee has been
24 paid. The project applicant shall present such certification to the ~~Director of Planning~~
25 ~~Department, DBI~~ and ~~the Director of the Mayor's Office of Housing MOH~~ prior to the issuance by

1 ~~the Director of Building Inspection DBI~~ of the first site or building permit or certificate of
2 occupancy for any development subject to this Section. ~~If the Director of Planning notices the~~
3 ~~Director of Building Inspection and the Director of the Mayor's Office of Housing that the sponsor has~~
4 ~~complied with this Section, or fails to respond within five business days, a site or building permit or~~
5 ~~certificate of occupancy shall not be disapproved pursuant to this Section.~~ Any failure of the
6 ~~Treasurer, DBI, Director of Building Inspection~~ or ~~the Director of Planning Department~~ to give any
7 notice under this Section shall not relieve a project applicant from compliance with this
8 Section. Where DBI inadvertently issues a site or building permit without payment of the fee, DBI
9 shall not issue any certificate of occupancy for the project without notification from the Treasurer that
10 the fee required by this Section has been paid. The procedure set forth in this Subsection is not
11 intended to preclude enforcement of the provisions of this section pursuant to any other section of this
12 Code, or other authority under the laws of the State of California. ~~Where the Director of Building~~
13 ~~Inspection issues any site of building permit or certificate of occupancy for the development project in~~
14 ~~error, or where a sponsor fails for any reason to pay the in-lieu fee to the Controller in compliance~~
15 ~~with this Section prior to the Director of Building Inspection's issuance of the first site or building~~
16 ~~permit or certificate of occupancy for the development project, the Director of Planning shall~~
17 ~~immediately initiate lien proceedings against the development project under Section 315.6(f) to recover~~
18 ~~the fee, and the Director of Building Inspection shall revoke any permit or certificate issued in error~~
19 ~~and refuse any site or building permit or certificate of occupancy until the project applicant has~~
20 ~~complied with this Section.~~

21 (e) All monies contributed pursuant to this section shall be deposited in the special
22 fund maintained by the Controller called the Citywide Affordable Housing Fund. The receipts
23 in the Fund are hereby appropriated in accordance with law to be used solely to (1) increase
24 the supply of housing affordable to qualifying households subsection subject to the conditions
25 of this Section, and (2) pay the expenses of ~~the Mayor's Office of Housing~~ MOH in connection

1 with monitoring and administering compliance with the requirements of the Program.
2 Monitoring and administrative expenses shall be appropriated through the annual budget
3 process or supplemental appropriation for ~~the Mayor's Office of Housing~~ MOH. The fund shall
4 be administered and expended by ~~the Director of the Mayor's Office of Housing~~ MOH, ~~who~~ which
5 shall have the authority to prescribe rules and regulations governing the Fund which are
6 consistent with this Section.

7 (f) Lien Proceedings

8 (1) A project applicant's failure to comply with the requirements of this Section shall
9 constitute cause for the City to record a lien against the development project in the sum of the
10 in-lieu fee required under this ordinance, as adjusted under this Section.

11 (2) ~~The Director of Planning~~ If, for any reason, the fee imposed pursuant to this ordinance
12 remains unpaid following issuance of the permit, the Treasurer shall initiate proceedings to impose
13 the lien in accordance with the procedures set forth in Chapter 10, Article XX, of the San
14 Francisco Administrative Code to make the entire unpaid balance of the fee, including interest, a lien
15 against all parcels used for the development project. The Treasurer, ~~and~~ shall send all notices
16 required by that Article to the owner of the property as well as the sponsor. The ~~Director~~
17 Treasurer shall also prepare a preliminary report notifying the sponsor of a hearing to confirm
18 such report by the Board of Supervisors at least 10 days before the date of the hearing. The
19 report to the sponsor shall contain the sponsor's name, a description of the sponsor's
20 development project, a description of the parcels of real property to be encumbered as set
21 forth in the Assessor's Map Books for the current year, a description of the alleged violation of
22 this ordinance, and shall fix a time, date, and place for hearing. The ~~Director of Planning~~
23 Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the
24 parcels of real property subject to lien. Except for the release of lien recording fee authorize
25 by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to

1 this ordinance shall be held in trust by the Treasurer and deposited in the Citywide Affordable
2 Housing Fund established in Section 313.12.

3 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given
4 or served upon the sponsor or owner for all purposes hereunder if personally served upon the
5 sponsor or owner or if deposited, postage prepaid, in a post office letterbox addressed in the
6 name of the sponsor or owner at the official address of the sponsor or owner maintained by
7 the Tax Collector for the mailing of tax bills or, if no such address is available, to the sponsor
8 at the address of the development project, and to the applicant for the site or building permit at the
9 address on the permit application.

10 (g) In the event a building permit expires prior to completion of the work on and
11 commencement of occupancy of a housing project so that it will be necessary to obtain a new
12 permit to carry out any development, the obligation to comply with this Program shall be
13 cancelled, and any in-lieu fee previously paid to the ~~Controller~~ Treasurer shall be refunded. If
14 and when the sponsor applies for a new permit, the procedures set forth in this ordinance
15 regarding construction of housing or payment of the in-lieu fee shall be followed.

16 (h) In the event that a development project for which an in-lieu fee imposed under this
17 Section has been fully paid is demolished or converted to a use or uses not subject to this ordinance
18 prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion of the
19 amount of an in-lieu fee paid. The portion of the fee refunded shall be determined on a pro rata basis
20 according to the ratio of the remaining useful life of the project at the time of demolition or conversion
21 in relation to its total useful life. For purposes of this ordinance, the useful life of a development
22 project shall be 50 years.

23 Section 5. The San Francisco Administrative Code is hereby amended by amending
24 Sections 38.1, 38.3, 38.4, 38.5, 38.6, 38.8, 38.8.5, 38.9, 38.10, 38.11 and 38.45 to read as
25 follows:

1 **SEC. 38.1. DEFINITIONS.**

2 For the purposes of this Chapter, the following definitions shall apply:

3 (a) Board. The Board of Supervisors of the City and County of San
4 Francisco.

5 (b) “Certificate of Final Completion and Occupancy” shall mean a certificate
6 of final completion and occupancy issued by any authorized entity or official of the City and
7 County of San Francisco including the ~~Superintendent, Bureau~~ Director of the Department of
8 Building Inspection, pursuant to the Building Code.

9 (c) City. The City and County of San Francisco.

10 (d) Director. The Director of the Municipal Transportation Agency.

11 (e) Downtown Area. That portion of the City and County bounded by Van
12 Ness Avenue as for north as Broadway, from Van Ness Avenue and Broadway easterly on
13 Broadway to Sansome Street, then northerly on Sansome Street to the Embarcadero; then
14 southeasterly on the Embarcadero to Berry Street; then southwesterly on Berry Street to De
15 Haro Street; then southerly on De Haro Street to Alameda Street; then westerly on Alameda
16 Street to Bryant Street; then northerly on Bryant Street to Thirteenth Street; then westerly on
17 Thirteenth Street to South Van Ness Avenue; then northerly to Van Ness Avenue. The
18 downtown area includes all property which abuts upon any of or is within the area surrounded
19 by the above enumerated boundary streets. This definition shall apply to all developments
20 which have not received a certificate of final completion and occupancy or for which the transit
21 impact development fee has not been billed on the effective date of this amendment.

22 ~~(e)~~(f) Gross Square Foot of Office Use. A square foot of floor space within a
23 structure, whether or not within a room, to be occupied by, or primarily serving, office use.

1 ~~(f)~~(g) New Development. Any new construction, addition, extension,
2 conversion, or enlargement of an existing structure which includes any gross square feet of
3 office use.

4 ~~(g)~~(h) Office Use. Any structure or portion thereof intended for occupancy by
5 business entities which will primarily provide clerical, professional or business services of the
6 business entity, or which will primarily provide clerical, professional or business services to
7 other business entities or to the public, at that location. ~~Among uses excluded from the~~
8 ~~definition of "office use" are the following uses, including space devoted to the management~~
9 ~~or administration of the uses, located in the same structure, building, or portion thereof:~~
10 ~~transient lodgings; sale of merchandise or personal services at retail to the public; storage of~~
11 ~~goods; buildings or portions thereof exclusively devoted to machines, computer equipment,~~
12 ~~telephone equipment, mechanical equipment, electrical equipment, or other utility operations;~~
13 ~~a building or portion thereof exclusively devoted to the storage of money, valuable securities~~
14 ~~or other valuables; manufacturing activities; residences; and space primarily used for, or~~
15 ~~where the most recent use was primarily for, the display of goods, wares, or merchandise,~~
16 ~~including but not limited to: (1) showrooms, design showrooms, and design showcases, (2)~~
17 ~~space displaying goods, wares, and merchandise either as samples or for sale, (3) space in~~
18 ~~which the occupants negotiate sales transactions, (4) display space in buildings that also~~
19 ~~contain office use, and (5) space actually used for display of goods, wares, and merchandise~~
20 ~~even if intended and primarily suitable for offices. Where the words "office space" are used in~~
21 this ordinance they shall mean the same as "office use."

22 ~~(h)~~(i) Peak Period. The total number of minutes in an average working day,
23 determined in accordance with Section 38.5(a), during which the Municipal Railway deploys
24 all its operable equipment so that the system experiences no excess vehicular capacity.

25

1 ~~(i)~~(j) Public Transit Service. Services of the Municipal Railway of the City and
2 County of San Francisco.

3 (k) Sponsor. An applicant seeking approval for construction of an office
4 development project subject to this Section, such applicants' successors and assigns, and/or any entity
5 which controls or is under common control with such applicant.

6 ~~(j)~~(l) Temporary Permit of Occupancy. Permission which is granted by any authorized
7 entity or official of the City and County of San Francisco, including the ~~Superintendent, Bureau~~
8 Director of the Department of Building Inspection, to occupy any building, structure or portion
9 thereof for office use prior to the completion of the entire building or structure.

10 **SEC. 38.3. PURPOSES.**

11 In order to be able to provide public transit services for new development in the
12 Downtown Area, the City and County must impose a fee. This fee shall be known as the
13 Transit Impact Development Fee.

14 It is the purpose of this ordinance to require ~~developers~~ sponsors of new
15 development in the Downtown Area to pay a fee which is related directly to the incremental
16 financial burden imposed upon the Municipal Railway both for initial capital outlay for the
17 acquisition of rolling stock and the construction of facilities; and for the long term operation,
18 maintenance and replacement of those facilities once they are in place.

19 The Transit Impact Development Fee is the most practical and equitable method
20 of financing the construction and operation of required public transit service additions and
21 improvements for the Downtown Area. This fee is intended to recover all costs incurred by the
22 Municipal Railway in meeting peak-period public transit service demands created by office
23 uses in each new development subject to the fee, including the expansion of service capacity
24 through the purchase of rolling stock, the installation of new lines, the addition to existing lines

25

1 and the long term operation, maintenance, repair and replacement of those expanded
2 facilities.

3 The rate-making process established by this ordinance is intended to identify
4 and measure the total incremental burdens imposed on the City and County's Municipal
5 Railway by virtue of the demands created by office uses in new development in the Downtown
6 Area. Such burdens are to be allocated equitably among new developments in the Downtown
7 Area subject to the Transit Impact Development Fee. This fee is designed to reflect the
8 benefits conferred on new development because of the added peak-period capacity to carry
9 the passengers generated by office uses in the new developments. Such benefits shall be
10 measured in terms of the costs incurred by the City and County in expanding and operating
11 the additional capacity in the Downtown Area required to meet the estimated long-term peak-
12 period public transit service needs of such office use in new development.

13 The Transit Impact Development Fee shall be collected as a condition for the
14 issuance of a ~~certificate of final completion and occupancy~~ site or building permit certificate of
15 final completion and occupancy for new development in the Downtown Area.

16 This fee will enable the City and County to pay the capital and operating costs of
17 all additional peak- period public transit services in the Downtown Area necessitated by office
18 use in new development. The fee schedule shall be reviewed annually and adjusted over time
19 to insure that it continues to reflect the projected cost of providing the additional public transit
20 service required by new developments.

21 Notwithstanding the basic purposes of this ordinance, the Transit Impact
22 Development Fee shall not exceed \$5 per square foot.

23 **SEC. 38.4. IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.**

24 A. Each ~~developer~~ sponsor of a new development in the Downtown Area shall
25 pay to the City and County of San Francisco and deliver to the Treasurer ~~upon~~ prior to upon the

1 issuance of ~~any temporary permit of occupancy and as a condition precedent to issuance of any~~
2 ~~certificate of final completion and occupancy whichever occurs first, the initial building or site permit~~
3 any temporary permit of occupancy and as a condition precedent to issuance of any certificate
4 of final completion and occupancy, whichever occurs first, for such new development in the
5 Downtown Area, a Transit Impact Development Fee. That fee shall be calculated on the basis
6 of the number of gross square feet of office use added by the new development, multiplied by
7 the per square foot rate in effect (a) on the effective date of this ordinance for new
8 developments for which building permits were issued prior to the effective date hereof, and (b)
9 on the date of the filing of the building permit application as to all other new development.
10 The rate shall be established as a current estimate of the total cost incurred by the City and
11 County providing the additional peak-period Municipal Railway transit capacity necessitated
12 by the public transit service needs generated by office uses in the new development over its
13 estimate useful life.

14 B. No city official or agency including the ~~Bureau~~ Department of Building
15 Inspection ("DBI") may issue an ~~certificate of final completion and occupancy~~ initial site or
16 ~~building permit~~ certificate of final completion and occupancy for any new development in the
17 Downtown Area subject to the fee until it has received notification from the Treasurer ~~evidence of~~
18 ~~payment of that~~ the Transit Impact Development Fee (or of the initial installment if installment
19 payment is permitted pursuant to Section 38.4) as set in accordance with Section 38.8 of this
20 Chapter has been paid.

21 C. Except as provided in Section 38.4(D) herein, the fee imposed by this
22 ordinance shall be payable with respect to (1) all new developments in the Downtown Area for
23 which building or site permits are issued on or after ~~the effective date of this ordinance~~ June 5,
24 1981, (2) such new developments in the Downtown Area for which building permits were
25 issued prior to ~~the effective date of this ordinance~~ June 5, 1981 where the developers had, in

1 receiving approval by the City Planning Commission, committed themselves to pay a
2 reasonable fee or participate in an assessment district or other financing mechanism designed
3 to enable the City and County to provide and operate additional peak-period public transit
4 service necessary to accommodate the additional number of peak-period public transit service
5 person-trips generated by office use in the new development, and (3) all other new
6 developments in the Downtown Area for which building permits were issued prior to ~~the~~
7 ~~effective date of this ordinance~~ June 5, 1981 but which had not received a certificate of final
8 completion and occupancy prior to ~~the effective date of this ordinance~~ that date.

9 D. The fee imposed by this ordinance shall not be payable with respect to
10 new construction or the addition, alteration, conversion, enlargement, extension, or
11 rehabilitation of an existing structure for which a valid building permit was issued prior to ~~the~~
12 ~~effective date of this ordinance~~ (June 5, 1981), if:

13 (1) No commitment was made to pay a reasonable fee or participate in an
14 assessment district or other financing mechanism designed to enable the City and County to
15 provide and operate additional peak-period public transit service as specified above; and

16 (2) One or more of the following occurred prior to June 5, 1981:

17 (a) In the case of new construction or the addition, alteration, conversion,
18 enlargement, extension or rehabilitation of an existing building involving building on vacant
19 land, whether previously occupied or not, the site or portion thereof on which the new building
20 or addition, alteration, conversion, enlargement, extension or rehabilitation of an existing
21 building is to be located has been fully prepared and the first structural element has been
22 erected thereon or the foundation has been completed.

23 (b) In the case of addition, alteration, conversion, enlargement, extension or
24 rehabilitation of an existing building not otherwise described in paragraph (1) above, any work
25

1 has been performed to change the configuration of space in the existing structure by the
2 movement of walls or otherwise.

3 (c) In the case of a conversion space within an existing structure not
4 requiring any physical changes nor a building permit, the space is first occupied for office use.

5 E. As to those new developments for which building *or site* permits are
6 issued on or after ~~the effective date of this ordinance~~ June 5, 1981, but prior to [September 2,
7 2002], the Transit Impact Development Fee is payable on the earliest of the following dates:

8 (1) The date when 50 percent of the net rentable area of the project has
9 been occupied;

10 (2) The date of issuance of the first temporary permit of occupancy with
11 respect to any office use in the new development;

12 (3) The date of issuance of a final certificate of occupancy.

13 F. Upon payment of the fee in full to the Treasurer and upon request of the
14 sponsor, the Treasurer shall issue a certification that the fee has been paid. The sponsor
15 shall present such certification to DBI prior to the issuance of the first certificate of occupancy
16 for the development project. DBI shall provide notice in writing to the Treasurer and the
17 Planning Department at least five business days prior to issuing the first certificate of
18 occupancy for any development project subject to this Section. DBI may not issue a
19 certificate for occupancy for any new development in the downtown area until it has received
20 notice from the Municipal Transportation Agency of the final determination of the amount of
21 the Transit Impact Development Fee to be paid, and the sponsor has provided DBI with
22 certification from the Treasurer that the fee has been paid.

23 (G) (1) As to those developments subject to the Transit Impact
24 Development Fee for which building permits have been issued prior to ~~the effective date of this~~

1 ~~ordinance June 5, 1981~~, the Transit Impact Development Fee shall be payable on ~~the effective~~
2 ~~that date of this ordinance~~ unless on that date none of the following has occurred:

3 (a) The date when 50 percent of the net rentable area of the project has
4 been occupied;

5 (b) Eight months after the date of issuance of the first temporary permit of
6 occupancy with respect to any office use in the new development;

7 (c) The date of issuance of a final certificate of occupancy; and

8 (d) The owner or developer has elected to make installment payments.

9 (2) If none of the foregoing has occurred on ~~the effective date of this ordinance~~
10 ~~June 5, 1981~~, the Transit Impact Development Fee shall be due when the earliest of the
11 following occurs:

12 (a) The date when 50 percent of the net rentable area of the project has
13 been occupied;

14 (b) The date of issuance of the first temporary permit of occupancy with
15 respect to any office use in the new development;

16 (c) The date of issuance of a final certificate of occupancy.

17 (3) By electing to defer payment by delivery to the City and County a written
18 election acknowledging the obligation therefor, the owner of the new development may
19 obligate itself to pay the fee in monthly installments of interest only, at the rate of one percent
20 per month, for a period of five years, and thereafter in level monthly payments of principal and
21 interest, at the rate of one percent per month on the outstanding balance amortizing over (1)
22 the remaining useful life of the development, or (2) 30 years, whichever is the shorter, such
23 payments to be made on or before the first day of each calendar month during the payment
24 period.

1 (4) The first monthly installment of the fee (if monthly installments are to be
2 made) shall be due on the first day of the first calendar month following the date the fee would
3 otherwise become due and such first payment shall be prorated according to the number of
4 days by which the due date follows the date the fee would otherwise become due.

5 ~~G. As to those new developments for which building or site permits are issued on or~~
6 ~~after [September 2, 2002], the Transit Impact Development Fee is due and payable prior to~~
7 ~~issuance of the initial building or site permit for the project.~~

8 **SEC. 38.5. TRANSIT IMPACT DEVELOPMENT FEE SCHEDULE.**

9 This Transit Impact Development Fee Schedule is set at an actuarially sound
10 level to ~~insure~~ ensure that the proceeds from the Transit Impact Development Fee from each
11 new development is sufficient, including such earnings as may be derived from investment of
12 all proceeds and amortization thereof, to pay for all capital and operating costs incurred in
13 providing and operating additional required peak-period public transit service capacity, over
14 the life of such new development; without, however, exceeding \$5 per square foot.

15 The following principals have been and, in the future, shall be observed in
16 calculating the amount of the Fee:

17 (a) The times during the day which constitute the peak-period shall be
18 determined functionally as the period of time during which a decision to add additional
19 scheduled vehicle runs would require Muni to purchase or lease additional vehicles because
20 the existing available fleet is fully committed in the sense that vehicles are actually in revenue
21 service, being held for deployment later in the peak-period, in reserve, or scheduled for repair
22 or preventive maintenance.

23 (b) State, federal and private operating and capital subsidies for the cost of
24 providing additional peak-period service shall be assumed only when and to the extent that
25 receipt of such subsidies is reasonably probable.

1 (c) The calculation of future costs of providing service for additional
2 passengers during the peak-periods should assume no increase in the level of crowding for
3 the system as a whole or material decreases in the frequency of service.

4 (d) The cost of electricity shall be calculated based on the price which the
5 City could receive for such power were it sold to PG&E assigned customers rather than the
6 cost at which it is furnished to the Municipal Railway by the Hetch Hetchy Water and Power
7 Department.

8 (e) Costs and revenue attributable to trips taken outside the peak-periods by
9 office workers and visitors shall not be included.

10 (f) In calculating the revenue from additional peak-period trips, a weighted
11 average fare (reflecting the frequency of trips paid by for cash fares as opposed to fast
12 passes) shall be estimated. In making this calculation, the average fare for a fast pass trip
13 shall be determined by dividing the cost of a fast pass by an estimate of the total number of
14 trips per month (whether or not taken in the peak-period) which will be taken by a fast pass
15 purchaser. In projecting future revenues, peak-period revenue shall be assumed to increase
16 at the same rate as peak-period operating costs.

17 (g) Where feasible, actual information for the fiscal year for which the fee is
18 being calculated should be used. Where estimates must be made, those estimates should be
19 based on such information as the ~~General Manager of the Public Utilities Commission~~ Director or
20 his or her delegate considers reasonable for the purpose. Possible changes in the operation
21 or productivity of the Municipal Railway shall be taken into account only if such changes are
22 the announced policy of the Municipal Railway or the ~~Public Utilities Commission~~ Municipal
23 Transportation Agency and the impact of such change on peak-period costs or revenues can be
24 estimated with reasonable certainty.

25 The Transit Impact Fee Schedule shall be as follows:

1 FOR EACH GROSS SQUARE FOOT OF OFFICE USE IN NEW DEVELOPMENT IN THE
2 DOWNTOWN AREA, \$5.00*.

3 *Formula fee rate calculated to be in excess of \$5.00; limited to \$5.00.

4 **SEC. 38.6. ADJUSTMENTS TO AND REVIEW OF THE TRANSIT IMPACT**
5 **DEVELOPMENT FEE SCHEDULE.**

6 The Transit Impact Development Fee Schedule as set forth in Section 38.5 shall
7 be reviewed annually by the Board, or more often as it may deem necessary, to insure that,
8 subject to the limit of \$5 per square foot, the fee accurately measures the cost of adding,
9 operating, and maintaining the additional peak- period public transit service required by office
10 uses in new development in the Downtown Area.

11 In determining the number of peak-period person-trips generated annually by
12 office uses in new developments in the Downtown Area the Board shall obtain a report from
13 the City Planning Commission. Such report shall estimate the number of peak-period person-
14 trips generated annually per gross square foot of office use in new developments.

15 The Board shall obtain a report from the ~~General Manager of Public Utilities~~
16 Director regarding the then- current cost per peak-period Municipal Railway person-trip
17 necessary to provide the expanded public transit services required by new development. The
18 ~~General Manager~~Director shall also report the estimated useful life in years of new
19 development, and may recommend different useful-life categories if deemed necessary or
20 desirable to ensure a fair and accurate fee schedule.

21 The ~~General Manage~~ Director shall also report the projected annual increases in
22 the cost per peak-period Municipal Railway person-trip necessary to provide the necessary
23 additional transit services during the estimated useful lives of new developments. Finally, the
24 ~~General Manager~~ Director shall report the estimated annual rate of return on the proceeds of
25

1 this fee which would be invested prior to their use to provide the necessary additional transit
2 services during the useful lives of new developments.

3 After receiving these reports and making them available for public distribution,
4 the Board of Supervisors shall conduct a public hearing in which it shall consider these
5 reports, hear testimony from any interested members of the public and receive such other
6 evidence as it may deem necessary. At the conclusion of that hearing the Board shall
7 determine the number of peak-period person-trips of the Municipal Railway generated
8 annually per gross square foot of office use in new development. The Board shall also
9 determine whether differing categories of useful lives expressed in years should be used to
10 ensure a fair and accurate fee schedule; and, if so, what the different categories should be.
11 The Board shall then determine the current cost per peak-period Municipal Railway person-
12 trip for the additional peak-period service necessary to serve new developments. The Board
13 shall also determine the appropriate annual rate of increase of the cost of providing additional
14 peak-period Municipal Railway person-trips and the appropriate annual rate of return on the
15 invested proceeds of this fee.

16 The Board shall then establish a Transit Impact Development Fee Schedule
17 expressed in terms of a sum per gross square foot for office use in new developments using
18 the general formula: annual peak- period Municipal Railway person-trips per gross square foot
19 times current cost per additional peak-period Municipal Railway person-trip times the present
20 value factor appropriate to the difference between the annual rate of cost increases; and
21 return on invested funds over the useful lives of new developments, establishing as many
22 separate rates as are deemed appropriate to the determinations of useful life categories.

23 The rates of the fee schedule shall be set at an actuarially sound level to insure
24 that the proceeds will be sufficient to pay for all capital and operating costs incurred in
25 providing and operating additional required peak-period capacity, including such earnings as

1 may be derived from investment of the proceeds and amortization thereof, over the life of
2 such new developments; provided, however, that said sum may not, for any category of useful
3 life, exceed \$5 per square foot.

4 In the event that the City and County shall impose and collect any additional
5 fees or assessments specifically to recover the costs of transit services, including transit
6 services the cost of which are included in the fee imposed by Section 38.4, the owner of a
7 development for which the Transit Impact Development Fee has been fully paid shall annually
8 receive a credit, up to the total amount of such fees or assessments, of that portion of the
9 prorated annual amount of the Transit Impact Development Fee equal to those costs of transit
10 services included in such fees or assessments which are also included in the Transit Impact
11 Development Fee: The prorated annual amount of the Transit Impact Development Fee is
12 obtained by dividing the total Transit Impact Development Fee already paid by the estimated
13 useful life of the development, in years.

14 The portion credited against the such fees or assessments shall be determined
15 by comparing those costs included in the Transit Impact Development Fee and those included
16 in such fees or assessments.

17 In the event that the City and County shall impose and collect any additional
18 fees or assessments specifically to recover the costs of transit services, including transit
19 services the cost of which are included in the fee imposed by Section 38.4, the owner of a
20 development for which the Transit Impact Development Fee is being paid in installments shall
21 annually receive a credit, up to the total amount of such fees or assessments, for that portion
22 of such annual installment, whether interest only or principal and interest, equal to those costs
23 of transit services included in such fees or assessments which are also included in the Transit
24 Impact Development Fee.

25

1 In the event the City and County shall impose and collect any additional fees or
2 assessments specifically to recover the costs of transit services, including transit services the
3 cost of which are included in the fee imposed by Section 38.4, the owner of a development for
4 which the Transit Impact Development Fee will be due but has not been paid shall receive a
5 credit against the development fee otherwise due in an amount equal to that portion of the
6 Transit Impact Development Fee equal to the value of those costs of transit services included
7 in such fees or assessments which are also included in the Transit Impact Development Fee.

8 **SEC. 38.8. SETTING OF FEE.**

9 (a) ~~This subsection shall apply where the initial site or building permit for a~~
10 ~~development is issued on or before September 2, 2002.~~ Each *developer sponsor*, prior to
11 obtaining a building *or site* permit for any new development in the downtown area after the
12 effective date of this ordinance, shall file with the *General Manager of the Public Utilities*
13 ~~Commission~~*Director*, on such form as he *or she* may develop, a report indicating the number of
14 gross square feet of the new development intended for office use. Each *developer sponsor* of a
15 new development for which a building permit was issued prior to ~~the effective date of this~~
16 ~~ordinance June 5, 1981~~ and for which a final certificate of occupancy had not been issued prior
17 to ~~the effective date of this ordinance June 5, 1981~~ shall file the same report prior to obtaining a
18 final certificate of occupancy. The ~~General Manager~~*Director* shall determine the number of
19 gross square feet of office use to which the Transit Impact Development Fee Schedule
20 applies, disregarding the number of gross square feet of office use being retained, determine
21 the useful life category if the Fee Schedule includes useful life categories, apply the fee
22 schedule, and determine the fee which reflects the additional cost of peak-period public transit
23 service generated by the office use in the new development. The applicant shall be notified of
24 the ~~General Manager's~~*Director's* determination in writing. The ~~General Manager~~*Director* shall
25 mail a copy of his *or her* determination to the applicant. The applicant may appeal the

1 determination of the number of gross square feet of office use subject to the fee, the
2 adjustment factor described in Section 38.8.5(b), or the useful-life category if the fee schedule
3 includes useful life categories, to the ~~Public Utilities Commission~~ Board of Directors of the
4 Municipal Transportation Agency in order to reduce the amount of the fee obligation. If the
5 applicant notifies the ~~General Manager~~ Director of his or her acceptance of the determination, or
6 does not appeal to the ~~Public Utilities Commission~~ Board of Directors of the Municipal
7 Transportation Agency within 15 days of the date of personal service or mailing of notice of the
8 ~~General Manager's~~ Director's determination, the ~~General Manager's~~ Director's determination shall
9 be final, and a notice of such determination shall be provided to the Central Permit Bureau DBI
10 and the Treasurer. ~~The Central Permit Bureau DBI~~ may not issue a site or building permit for any
11 new development in the downtown area until it has received notice from the ~~General Manager~~
12 ~~of the Public Utilities Commission or the Public Utilities Commission~~ Municipal Transportation
13 Agency of the final determination of the amount of the Transit Impact Development Fee to be
14 paid.

15 ~~(b)~~—The following requirements shall apply where the initial site or building permit for
16 any new development subject to this ordinance is issued on or after September 2, 2002.

17 (1)—Each sponsor, prior to obtaining a building or site permit for any new
18 development in the downtown area, shall file with the Director, on such form as he or she may
19 develop, a report indicating the number of gross square feet of the new development intended
20 for office use. The Director shall determine the number of gross square feet of office use to
21 which the Transit Impact Development Fee Schedule applies, disregarding the number of
22 gross square feet of office use being retained, determine the useful life category if the Fee
23 Schedule includes useful life categories, apply the fee schedule, and determine the fee which
24 reflects the additional cost of peak-period public transit service generated by the office use in
25 the new development. The Director shall mail a written copy of his or her determination to the

1 applicant. The applicant may appeal the determination of the number of gross square feet of
2 office use subject to the fee, the adjustment factor described in Section 38.8.5(b), or the
3 useful life category if the fee schedule includes useful life categories, to the Board of Directors
4 of the Municipal Transportation Agency in order to reduce the amount of the fee obligation. If
5 the applicant notifies the Director of his or her acceptance of the determination, or does not
6 appeal to the Board of Directors of the Municipal Transportation Agency within 15 days of the
7 date of personal service or mailing of notice of the Director's determination, the Director's
8 determination shall be final. The Director shall provide notice of such determination to DBI
9 and the Treasurer within 30 days from the date the determination is final. Upon payment of
10 the fee in full to the Treasurer and upon request of the sponsor, the Treasurer shall issue a
11 certification that the fee has been paid. The sponsor shall present such certification to DBI
12 prior to the issuance of the first site or building permit for the development project. DBI shall
13 provide notice in writing to the Treasurer and the Planning Department at least five business
14 days prior to issuing the first site or building permit for any development project subject to this
15 Section. DBI may not issue a site or building permit for any new development in the
16 downtown area until it has received notice from the Municipal Transportation Agency of the
17 final determination of the amount of the Transit Impact Development Fee to be paid, and the
18 sponsor has provided DBI with certification from the Treasurer that the fee has been paid.

19 (2) Where DBI inadvertently issues a site or building permit without payment of the
20 fee, DBI shall not issue any certificate of final completion and occupancy for the project
21 without notification from the Treasurer that the fee required by this Section has been paid.

22 **SEC. 38.8.5. CREDITS FOR PRIOR USE.**

23 In determining the number of gross square feet of office use to which the Transit
24 Impact Development Fee Schedule applies, the *General Manager* Director shall provide for the
25 following credits:

1 a. For prior office uses, there shall be credit for the number of gross square
2 feet of office use being eliminated as part of the project.

3 b. For prior uses other than office use, there shall be a credit for the number
4 of gross square feet of nonoffice use being eliminated multiplied by an adjustment factor to
5 reflect the difference between office building peak-period Municipal Railway trip generation
6 rates and peak-period Municipal Railway trip generation rates for other uses. The adjustment
7 factor shall be determined by the ~~General Manager~~Director as follows:

8 (1) The adjustment factor shall be a fraction, the numerator of which shall be
9 the peak-period Municipal Railway trip generation rate which the ~~General Manager~~Director
10 shall determine, in consultation with the Department of City Planning applies to the class of
11 prior use being eliminated by the project.

12 (2) The denominator of the fraction shall be the peak-period Municipal
13 Railway trip generation rate for office use used in the most recent calculation of the Transit
14 Impact Development Fee Schedule approved by the Board of Supervisors.

15 (3) Notwithstanding the foregoing, the adjustment factor shall not exceed 1.

16 **SEC. 38.9. RULES AND REGULATIONS.**

17 The ~~Public Utilities Commission~~ Municipal Transportation Agency is empowered to
18 adopt such rules, regulations, and administrative procedures as it deems necessary to
19 implement this Chapter, including the determination, collection, refund, and utilization of the
20 proceeds, of the Transit Impact Development Fee.

21 **SEC. 38.10. NONPAYMENT, RECORDATION OF NOTICE OF FEE AND NOTICE**
22 **OF DELINQUENCY, ADDITIONAL REQUEST; NOTICE OF ASSESSMENT OF INTEREST**
23 **AND INSTITUTION OF LIEN PROCEEDINGS FOR PENDING PROJECTS.**

24 The following procedures shall govern development projects subject to this ordinance
25 for which the initial site or building permit was issued prior to September 2, 2002.

1 A. Upon the ~~General Manager's~~Director's determination that a development is
2 within the transit impact development fee boundaries as defined by Section 38.1(d) of this
3 ordinance, ~~he~~the Director shall notify the Treasurer that the development is subject to the fee. The
4 Treasurer may cause the County Recorder to record a notice that such development is subject
5 to the Transit Impact Development Fee. ~~He~~The Treasurer shall serve or mail a copy of such
6 notice to the persons liable for payment of the fee and the owners of the real property
7 described in the notice. The notice shall include (1) a description of the real property subject
8 to the fee; (2) a statement that the development is within the transit impact development fee
9 downtown area boundaries as defined by Section 38.1(d) of this ordinance and is subject to
10 the imposition of the fee; and (3) a statement that the amount of the fee to which the building
11 is subject is determined pursuant to San Francisco Administrative Code Section 38.8 and
12 related provisions of said ordinance.

13 B. When the Director determines that the fee is due, the Director shall notify
14 the Treasurer, who shall send a request for payment to the sponsor.

15 C. Payment of the transit impact development fee imposed by this ordinance
16 is delinquent if (1) in the case of a fee not payable in installments the fee is not paid within 30
17 days of request for payment; (2) in the case of a fee payable in installments the fee
18 installment is not paid within 30 days of the date fixed for payment.

19 D. Where the transit impact development fee, not payable in installments
20 pursuant to Section 38.4 hereof is not paid within 30 days of request for payment and where
21 the transit impact development fee is payable in installments pursuant to Section 38.4 of this
22 ordinance and any installment is not paid within 30 days of the date fixed for payment;

23 (1) The ~~General Manager~~ Treasurer or his or her designee may cause the
24 County Recorder to record a notice of delinquent transit impact development fee which shall
25 include: (a) The amount of the delinquent fee; (b) the amount of the entire fee as reflected on

1 the final determination and a statement of whether the fee is payable in installments; (c) the
2 fee, interest and penalty then due; (d) the interest and penalties that shall accrue on the
3 delinquent fee if not promptly paid; (e) a description of the real property subject to the fee; (f)
4 notification that if the fee is not promptly paid proceedings will be instituted before the Board
5 of Supervisors to impose a lien for the unpaid fee together with any penalties and interest
6 against the real property described in the delinquency notice; (g) notification of the fee payer's
7 right to appeal the delinquency determination to the ~~Public Utilities Commission~~ Board of
8 Directors of the Municipal Transportation Agency within 15 days of the notice to the fee payer.

9 (2) Where the ~~General Manager~~ Treasurer determines to record a notice of
10 delinquency he or she shall also serve or mail the notice of delinquent transit impact
11 development fee to the persons liable for the fee and to the owners of the real property
12 described on the notice.

13 (3) Where a notice of transit impact development fee delinquency has been
14 recorded and the delinquent fee is paid, or the ~~General Manager's~~ Treasurer's determination of
15 delinquency is reversed by appeal to the ~~Public Utilities Commission~~ Board of Directors of the
16 Municipal Transportation Agency or the delinquency is otherwise cured, the ~~General Manager~~
17 Treasurer shall promptly cause the County Recorder to record a notice that the transit impact
18 development fee delinquency has been cured. Said notice shall include: (a) Description of the
19 real property affected; (b) the book and page number of the county record wherein the notice
20 of delinquency was recorded; (c) the date the notice of delinquency was recorded; (d)
21 notification that the delinquency reflected on the notice of delinquency was cured and the date
22 of cure; (e) the amount of the entire fee as reflected on the final determination; (f) if applicable,
23 the amount of the fee paid to effect the cure; and (g) if applicable, a statement that the fee
24 was payable in installments and specification of the delinquency installments cured; (h) if
25 applicable, the amount of the fee paid to effect the cure.

1 (4) The ~~General Manager~~ Treasurer shall serve or mail the notice that the
2 transit impact development fee delinquency has been cured, referred to in Section 38.10~~B~~D(3)
3 of this ordinance, to the persons liable for the fee and to the owners of the real property
4 described in such notice.

5 ~~D~~E. Where the transit impact development fee, not payable in installments
6 pursuant to Section 38.4 hereof is not paid within 30 days of request for payment and where
7 the transit impact development fee is payable in installments pursuant to Section 38.4 of this
8 ordinance and the installment is not paid within 30 days of the date fixed for payment, the
9 ~~General Manager~~ Treasurer or his or her designee shall mail an additional request for payment
10 and notice to the owner stating the following:

11 (1) If the amount due is not paid within 30 days of the date of mailing the
12 additional request and notice, interest at the ~~legal~~ rate of one and one-half percent per month or
13 portion thereof shall be assessed upon the fee or installment due.

14 (2) With respect to both noninstallment and installment fees, if the account is
15 not current within 60 days of the date of mailing the additional request and notice, the ~~General~~
16 ~~Manager~~ Treasurer shall institute proceedings to record a ~~special assessment~~ lien in accordance
17 with Section 38.11 for the entire balance and any accrued interest against the property upon
18 which the fee is owed.

19 ~~E~~F. Thirty days after mailing the additional request for payment the ~~General~~
20 ~~Manager~~ Treasurer may assess interest as specified in paragraph 38.10~~(A)(C)~~D (1) above.
21 Sixty days after mailing the additional request for payment and notice, the ~~General Manager~~
22 Treasurer may institute lien proceedings as specified in Section 38.11.

23 G. Notwithstanding anything to the contrary in this Chapter, the Municipal
24 Transportation Agency shall continue to collect payments from any sponsor who has been
25

1 paying the fee on an installment basis or pursuant to settlement agreement entered into prior
2 to September 30, 2002.

3 **SEC. 38.10-1. COLLECTION OF FEE AND IMPOSITION OF INTEREST ON NEW**
4 **PROJECTS.**

5 The following procedures shall govern development projects subject to this Chapter for
6 which the initial site or building permit is issued on or after September 2, 2002.

7 (a) — The fee required by this Chapter is due and payable to the Treasurer prior to
8 issuance of the first building or site permit building or site permit for the office development
9 project. If, for any reason, the fee remains unpaid following issuance of the permit, any
10 amount due shall accrue interest at the rate of one and one-half percent per month, or fraction
11 thereof, from the date of issuance of the permit until the date of final payment.

12 (b) — If, for any reason, the fee remains unpaid following issuance of the permit, the
13 Treasurer shall institute lien proceedings as specified in Section 38.11.

14 **SEC. 38.11. LIEN PROCEEDINGS; NOTICE.**

15 (a) A. ~~If~~ For projects subject to Section 38.10, if if payment of the fee not payable in
16 installments is not received within 30 days following mailing of the additional request and
17 notice or if with respect to installment payments the account is not brought current within 60
18 days of the mailing of the additional request and notice, ~~or, for projects subject to Section~~
19 ~~38.10-1, the fee remains unpaid following issuance of the permit the~~ *General Manager of the*
20 *Public Utilities Commission* Treasurer shall initiate proceedings in accordance with Article XX of
21 Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of
22 the Transit Impact Development Fee, including interest on the unpaid fee or installments, a
23 lien against all parcels used for the development project. The Treasurer shall send all notices required
24 by that Article to the owner of the property as well as the sponsor. The Treasurer shall also prepare a
25 preliminary report notifying the sponsor of a hearing to confirm such report by the Board of

1 Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain the
2 sponsor's name, a description of the sponsor's development project, a description of the parcels of real
3 property to be encumbered as set forth in the Assessor's Map Books for the current year, a description
4 of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing. The
5 Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the parcels of
6 real property subject to lien against the property served. Such charges against delinquent accounts
7 shall be reported to the Board at least once each year. Except for the release of lien recording fee
8 authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector
9 pursuant to this ordinance shall be held in trust by the Treasurer and distributed as provided in
10 Section 38.6 of this Chapter.

11 ~~(b)~~B. Any notice required to be given to a sponsor or owner shall be sufficiently given or
12 served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or
13 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor
14 or owner at the official address of the sponsor or owner maintained by the Tax Collector for the
15 mailing of tax bills or, if no such address is available, to the sponsor at the address of the development
16 project, and to the applicant for the site or building permit at the address on the permit application.

17 **SEC. 38.45. CHARITABLE EXEMPTIONS.**

18 ~~(a)~~A. When the property or a portion thereof will be exempt from real property
19 taxation pursuant to California Constitution, Article XIII, Section 4, as implemented by
20 California Revenue and Taxation Code, Section 214, then the ~~developer~~ sponsor shall not be
21 required to pay the Transit Impact Development Fee attributed to the net new office space in
22 the exempt property or portion thereof, so long as the property or portion thereof continues to
23 enjoy the aforementioned exemption from real property taxation.

24 ~~(b)~~B. The Transit Impact Development Fee shall be calculated for exempt
25 structures in the same manner and at the same time as for all other structures. The ~~developer~~

1 sponsor may apply to the ~~Public Utilities Commission~~ Municipal Transportation Agency for an
2 exemption pursuant to the standards set forth herein. In the event the ~~Commission~~ Municipal
3 Transportation Agency determines that the ~~developer~~ sponsor is entitled to an exemption
4 under this Section, it shall cause to be recorded a notice advising that the Transit Impact
5 Development Fee has been calculated and imposed upon the structure and that the structure
6 or a portion thereof has been exempted from payment of the fee but that if the property or
7 portion thereof loses its exempt status during the 10-year period commencing with the date of
8 the imposition of the Transit Impact Development Fee, then the building owner shall be
9 subject to the requirement to pay the fee.

10 (e)C. If within 10 years from the date of the issuance of the Certificate of Final
11 Completion and occupancy, the exempt property or portion thereof loses its exempt status,
12 then the property owner shall, within 90 days thereafter, be obligated to pay the Transit Impact
13 Development Fee, reduced by an amount reflecting the duration of the charitable exempt
14 status in relation to the useful life estimate used in determining the Transit Impact
15 Development Fee for that structure. The amount remaining to be paid shall be determined by
16 recalculating the fee using a useful life equal to the useful life used in the initial calculation
17 minus the number of years during which the exempt status has been in effect. If the exempt
18 property or a portion thereof loses its exempt status, the property owner shall notify the
19 Municipal Transportation Agency within 30 days. Upon being notified or otherwise
20 determining that the property has lost its exempt status, the Municipal Transportation Agency
21 shall promptly notify the Treasurer of the change in status.

22 (d)D. In the event a property owner fails to pay a fee within the 90-day period, a
23 notice for request of payment shall be served by the ~~Public Utilities Commission~~ Treasurer

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1 pursuant to Section 38.10 of this Chapter. Thereafter, upon nonpayment, a lien proceeding
2 shall be instituted pursuant to Sections 38.11 to ~~38.17, inclusive~~, of this Chapter.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: DAVID A. GREENBURG
7 Deputy City Attorney

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