

1 [Requiring payment of the Transit Impact, Housing, Child Care, Park and Inclusionary
 2 Housing Fees before issuance of an initial site or building permit, transferring collection of the
 fees to the Treasurer, and imposing the fees upon conversion of showrooms to offices.]

3
 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, 315.3 and 315.6 to (a) 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, require payment of the fees prior to
 9 issuance of the initial building or site permit for the project, and conform collection
 10 procedures for these fees, and (b) to amend the definition of “office use” to exclude
 11 space primarily used for the display of goods, wares, and merchandise in order to
 12 clarify that conversions of showroom display space to offices are subject to the
 13 development impact mitigation requirements of Planning Code Sections 139, 313, and
 14 314; and (2) amending the Administrative Code by amending Sections 38.1, 38.3, 38.4,
 15 38.5, 38.8, 38.8.5, 38.10 and 38.11, and adding a new Section 38.10-1 to (a) require
 16 payment of the Transit Impact Development Fee prior to issuance of the initial building
 17 or site permit for the project, conform collection procedures for the fee and transfer
 18 collection authority for the fee from the General Manager of the Public Utilities
 19 Commission to the Treasurer and (b) amend the definition of office use in Section 38.1
 20 to exclude space primarily used for the display of goods, wares, and merchandise in
 21 order to clarify that conversions of showroom display space to offices are subject to
 22 the Transit Impact Development Fee.**

23 Note: Additions are *single-underline italics Times New Roman*;
 24 deletions are ~~*strikethrough italics Times New Roman*~~.
 Board amendment additions are double underlined.
 25 Board amendment deletions are ~~strikethrough normal~~.

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

2 Section 1. The San Francisco Planning Code is hereby amended by amending Section
3 139 to read as follows:

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

5 (a) **Findings and Purposes.** Existing public park facilities located in the
6 downtown office districts are at or approaching capacity utilization by the daytime population
7 in those districts. The need for additional public park and recreation facilities in the downtown
8 districts will increase as the daytime population increases as a result of continued office
9 development in those areas. While the open space requirements imposed on individual office
10 and retail developments address the need for plazas and other local outdoor sitting areas to
11 serve employees and visitors in the districts, such open space cannot provide the same
12 recreational opportunities as a public park. In order to provide the City and County of San
13 Francisco with the financial resources to acquire and develop public park and recreation
14 facilities which will be necessary to serve the burgeoning daytime population in these districts,
15 a Downtown Park Fund shall be established as set forth herein.

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

18 (1) "First certificate of occupancy" shall mean either a temporary certificate of
19 occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco
20 Building Code Section 307, whichever is issued first.

21 (2) "Net addition of gross floor area of office use" shall mean gross floor area
22 as defined in Planning Code Section ~~102.8~~102.9, to be occupied by, or primarily serving, office
23 use, less the gross floor area in any structure demolished or rehabilitated as part of the
24 proposed office development project which gross floor area was used primarily and
25 continuously for office use and was not accessory to any use other than office use for at least

1 five years prior to the City Planning Department approval of the office development project
2 subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is
3 shorter.

4 (3) "Office development project" shall mean any new construction, addition,
5 extension, conversion or enlargement, or combination thereof, of an existing structure which
6 includes any gross floor area of office use; provided, however, that this term shall not include
7 an addition to an existing structure which would add gross floor area in an amount less than
8 20 percent of the gross floor area of the existing structure.

9 (4) "Office use" shall mean any structure or portion thereof intended for
10 occupancy by business entities which will primarily provide clerical, professional or business
11 services of the business entity, or which will provide clerical, professional, or business
12 services to other business entities or to the public at that location including, but not limited to,
13 the following services: banking, law, accounting, insurance, management, consulting,
14 technical, and the office functions of manufacturing and warehousing businesses, and
15 excluding space primarily used for, or where the most recent use was primarily for, the display of
16 goods, 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 for sale,
18 (3) space in 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 even if
20 intended and primarily suitable for offices. Such definition shall include all uses encompassed
21 within the meaning of Planning Code Section 219; provided, however, that the term "office
22 use" shall not include any such use which qualifies as an accessory use, as defined and
23 regulated in Sections 204 through 204.5 of this Code.

24 (5) "Retail use" shall mean space within any structure or portion thereof
25 intended or primarily suit- able for occupancy by persons or entities which supply commodities

1 to customers on the premises including, but not limited to, stores, shops, restaurants, bars,
2 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220
3 through 225, and also including all space accessory to such retail use.

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

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

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

23 (e) Determination of Amount. (1) Prior to approval by either the Planning
24 Department or the Planning Commission of a building or site permit for a development project subject
25

1 to this section, the Department shall issue a notice complying with Planning Code Section 306.3 setting
2 forth its initial determination of the net addition of gross floor area of office use subject to this section.

3 (2) Any person may appeal the initial determination by delivering an appeal in
4 writing to the Planning Department within 15 days of the notice. If the initial determination is not
5 appealed within the time allotted, the initial determination shall become a final determination. If the
6 initial determination is appealed, the Planning Commission shall schedule a public hearing prior to the
7 approval of the development project by the Department or the Commission to determine the net
8 addition of gross floor area of office use subject to this ordinance. The public hearing may be
9 scheduled separately or simultaneously with a hearing under Planning Code Sections 306.2, 309(h),
10 313.4, 314.5, 315.3 or a Discretionary Review hearing under San Francisco Municipal Code Part III,
11 Section 26. The Commission shall make a final determination of the net addition of gross floor area of
12 office use subject to this section at the hearing.

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

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

1 the calculation of the amount of housing required under this ordinance and, if so, the Department or
2 the Commission shall revise the housing requirement imposed on the permit application in compliance
3 with this section within 60 days following such remand and notify the sponsor in writing of such
4 revision or that a revision is not required. If the net addition of gross floor area of office use subject to
5 this section is revised, the Commission shall promptly notify the Treasurer of the revision.

6 **(e)(f) Procedure Regarding Temporary Site or Building Permit of Occupancy.**

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

1 ~~Section.~~ Any failure of the Treasurer, DBI, or the Planning Department to give any notice under this
2 Section shall not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues
3 a site or building permit without payment of the fee, DBI shall not issue any certificate of occupancy for
4 the project without notification from the Treasurer that the fee required by this Section has been paid.

5 The procedure set forth in this Subsection is not intended to preclude enforcement of the
6 provisions of this section pursuant to any other section of this Code, or other authority under
7 the laws of the State of California.

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

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

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

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

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

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

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

21 Section 2. The San Francisco Planning Code is amended by amending Sections
22 313.1, 313.4, 313.5, 313.6., 313.7, 313.8, 313.9 and 313.10, to read as follows:

23 **SEC. 313.1. DEFINITIONS.**

24 The following definitions shall govern interpretation of this ordinance:
25

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

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

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

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

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

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

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

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

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

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

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

25

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

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

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

10 (5) "Allowable average annual rent" shall mean:

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

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

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

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

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

25

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

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

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

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

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

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

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

18 ~~(1413) "Director of Planning" shall mean the Director of "Department" shall mean the~~
19 ~~Planning Department or his or her designee, including the Mayor's Office of Housing and other City~~
20 ~~agencies or departments.~~

21 ~~(1514)~~ "Entertainment development project" shall mean any new construction,
22 addition, extension, conversion, or enlargement, or combination thereof, of an existing
23 structure which includes any gross square feet of entertainment use.

24 ~~(1615)~~ "Entertainment use" shall mean space within a structure or portion thereof
25 intended or primarily suitable for the operation of a nighttime entertainment use as defined in

1 San Francisco Planning Code Section 102.17, a movie theater use as defined in San
2 Francisco Planning Code Sections 790.64 and 890.64, an adult theater use as defined in San
3 Francisco Planning Code Section 191, any other entertainment use as defined in San
4 Francisco Planning Code Sections 790.38 and 890.37, and, notwithstanding San Francisco
5 Planning Code Section 790.38, an amusement game arcade (mechanical amusement
6 devices) use as defined in San Francisco Planning Code Sections 790.4 and 890.4. Under
7 this ordinance, "entertainment use" shall include all office and other uses accessory to the
8 entertainment use, but excluding retail uses and office uses not accessory to the
9 entertainment use.

10 (~~1716~~) "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 (~~1817~~) "Hotel development project" shall mean any new construction, addition,
14 extension, conversion, or enlargement, or combination thereof, of an existing structure which
15 includes any gross square feet of hotel use.

16 (~~1918~~) "Hotel use" shall mean space within a structure or portion thereof
17 intended or primarily suitable for rooms, or suites of two or more rooms, each of which may or
18 may not feature a bathroom and cooking facility or kitchenette and is designed to be occupied
19 by a visitor or visitors to the City who pays for accommodations on a daily or weekly basis but
20 who do not remain for more than 31 consecutive days. Under this ordinance, "hotel use" shall
21 include all office and other uses accessory to the renting of guest rooms, but excluding retail
22 uses and office uses not accessory to the hotel use.

23 (~~2019~~) "Household" shall mean any person or persons who reside or intend to
24 reside in the same housing unit.

25

1 (~~2120~~) “Household of lower income” shall mean a household composed of one
2 or more persons with a combined annual net income for all adult members which does not
3 exceed the qualifying limit for a lower-income family of a size equivalent to the number of
4 persons residing in such household, as set forth for the County of San Francisco in Title 25 of
5 the California Code of Regulations Section 6932.

6 (~~2221~~) “Household of median income” shall mean a household composed of one
7 or more persons with a combined annual net income for all adult members which does not
8 exceed the qualifying limit for a median-income family of a size equivalent to the number of
9 persons residing in such household, as set forth for the County of San Francisco in Title 25 of
10 the California Code of Regulations Section 6932.

11 (~~2322~~) “Household of moderate income” shall mean a household composed of
12 one or more persons with a combined annual net income for all adult members which does
13 not exceed the qualifying limit for a moderate-income family of a size equivalent to the number
14 of persons residing in such household, as set forth for the County of San Francisco in Title 25
15 of the California Code of Regulations Section 6932.

16 (~~2423~~) “Housing developer” shall mean any business entity building housing
17 units which receives a payment from a sponsor for use in the construction of the housing
18 units. A housing developer may be (a) the same business entity as the sponsor, (b) an entity
19 in which the sponsor is a partner, joint venturor, or stockholder, or (c) an entity in which the
20 sponsor has no control or ownership.

21 (~~2524~~) “Housing unit” or “unit” shall mean a dwelling unit as defined in San
22 Francisco Housing Code Section 401.

23 (~~2625~~) “Interim Guidelines” shall mean the Office Housing Production Program
24 Interim Guidelines adopted by the City Planning Commission on January 26, 1982, as
25 amended.

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

- 5 (A) For all one-bedroom units, for a household of two persons;
- 6 (B) For all two-bedroom units, for a household of three persons;
- 7 (C) For all three-bedroom units, for a household of four persons;
- 8 (D) For all four-bedroom units, for a household of five persons.

9 (~~2827~~) "Maximum purchase price" shall mean the maximum purchase price that
10 a household of moderate income can afford to pay for an owned unit based on an annual
11 payment for all housing costs of 33 percent of the combined household annual net income, a
12 10 percent down payment, and available financing, for the following household sizes:

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

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

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

1 demolished or rehabilitated, whichever is shorter, so long as such space was subject to this
2 ordinance or the Interim Guidelines.

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

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

20 (32) "Net addition of gross square feet of research and development space"
21 shall mean gross floor area as defined in San Francisco Planning Code Section 102.9 to be
22 occupied by, or primarily serving, research and development use, less the gross floor area in
23 any structure demolished or rehabilitated as part of the proposed research and development
24 project that was used primarily and continuously for entertainment, hotel, office, research and
25 development, or retail use and was not accessory to any use other than entertainment, hotel,

1 office, research and development, or retail use, for five years prior to Planning Commission
2 approval of a research and development project subject to this Section, or for the life of the
3 structure demolished or rehabilitated, whichever is shorter.

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

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

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

19 ~~(H)~~ Professional, banking; insurance; management; consulting; technical;
20 sales; and design; and the non-accessory office functions of manufacturing and warehousing
21 businesses; all uses encompassed within the definition of "office" at Section 219 of this Code;
22 multimedia, software development, web design, electronic commerce, information technology
23 and other computer based technology; all uses encompassed within the definition of
24 "administrative services" at Section 790.106 or Section 890.106 of this Code; all "business or
25 professional services" as proscribed at Section 890.108 of this Code excepting only those

1 uses which are limited to the Chinatown Mixed Use District; all "business services," as
2 described at Section 890.11 of this Code which are conducted in space designated for office
3 use under the San Francisco Building Code and which are not excluded pursuant to
4 Subsection B below.

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

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

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

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

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

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

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

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

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

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

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

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

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

24

25

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

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

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

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

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

19 (c) Any person may appeal the initial determination by delivering an appeal
20 in writing to the Department within 15 days of such notice. If the initial determination is not
21 appealed within the time allotted, the initial determination shall become a final determination.
22 If the initial determination is appealed, the Commission shall schedule a public hearing prior to
23 the approval of the development project by the Department or the Commission to determine
24 the net addition of gross square feet of each type of space subject to this ordinance. The
25 public hearing may be scheduled separately or simultaneously with a hearing under Planning

1 Code Sections 139(g), 306.2, 309(h), 314.5, 315.3 or a Discretionary Review hearing under
2 San Francisco Municipal Code Part III, Section 26. The Commission shall make a final
3 determination of the net addition of gross square feet of each type of space subject to this
4 ordinance at the hearing.

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

14 (e) In the event that the Department or the Commission takes action affecting
15 any development project subject to this ordinance and such action is thereafter modified,
16 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by
17 court action, the permit application for such development project shall be remanded to the
18 Commission to determine whether the proposed project has been changed in a manner which
19 affects the calculation of the amount of housing required under this ordinance and, if so, the
20 Commission shall revise the housing requirement imposed on the permit application in
21 compliance with this ordinance within 60 days of such remand and notify the sponsor in
22 writing of such revision or that a revision is not required. If the net addition of gross square feet of
23 any type of space subject to this ordinance is revised, the Commission shall notify the Treasurer, DBI
24 and MOH of the nature and extent of the revision.

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

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

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

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

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

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

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

20 Net Addition Gross Sq. Ft. Entertainment Space × .000140 = Housing
21 Units

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

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

24 Net Addition Gross Sq. Ft. Retail Space × .000140 = Housing Units
25

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

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

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

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

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

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

10 (c) Within 30 days after the sponsor has submitted a written housing
11 development project plan and, if necessary, an appraisal to the ~~Director of Planning~~
12 ~~Department~~ and ~~the Director of the Mayor's Office of Housing MOH~~ under Subsection (b) of this
13 Section, the ~~Director of Planning Department~~ shall notify the sponsor in writing of ~~his or her its~~
14 initial determination as to whether the plan and appraisal are in compliance with this Section,
15 publish the initial determination in the next Planning Commission calendar, and cause a public
16 notice to be published in an official newspaper of general circulation stating that such housing
17 development plan has been received and stating the ~~Director of Planning Department's~~ initial
18 determination. In making the initial determination for an application where the sponsor elects
19 to contribute land to a housing developer, the ~~Director of Planning Department~~ shall consult
20 with the Director of Property and include within ~~his or her its~~ initial determination a finding as to
21 the fair market value of the land proposed for contribution to a housing developer. Within 10
22 days after such written notification and published notice, the sponsor or any other person may
23 request a hearing before the Commission to contest such initial determination. If the ~~Director~~
24 ~~of Planning Department~~ receives no request for a hearing within such 10-day period, the
25 determination of the ~~Director of Planning Department~~ shall become a final determination. Upon

1 receipt of any timely request for hearing, the ~~Director of Planning~~ Department shall schedule a
2 hearing before the Commission within 30 days. The scope of the hearing shall be limited to
3 the compliance of the housing development plan and appraisal with this Section, and shall not
4 include a challenge to the amount of the housing requirement imposed on the development
5 project by the Department or the Commission. At the hearing, the Commission may either
6 make such revisions to the ~~Director of Planning~~ Department's initial determination as it may
7 deem just, or confirm the ~~Director of Planning~~ Department's initial determination. The
8 Commission's determination shall then become a final determination, and the ~~Director of~~
9 Planning Department shall provide written notice of the final determination to the sponsor, ~~the~~
10 ~~Director of the Mayor's Office of Housing~~ MOH, and to any person who timely requested a
11 hearing of the ~~Director of Planning~~ Department's determination. The ~~Director of Planning~~
12 Department shall also provide written notice to the Treasurer, Director of Building Inspection DBI
13 and ~~the Director of the Mayor's Office of Housing~~ MOH that the housing units to be constructed
14 pursuant to such plan are subject to this ordinance.

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

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

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

25

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

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

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

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

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

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

15 ~~The Director of Building Inspection DBI~~ shall provide notice in writing to the
16 ~~Treasurer, the Director of Planning Department and the Director of the Mayor's Office of Housing~~
17 ~~MOH~~ at least five business days prior to issuance of the first site or building permit for any
18 development project for which the sponsor elects to pay a sum or contribute land to one or
19 more housing developers. If the ~~Treasurer, or the Director of Planning Department~~ notifies ~~the~~
20 ~~Director of Building Inspection DBI~~ within the five business days that the conditions of (1)
21 through (3) of this Subsection have not been met, ~~the Director of Building Inspection DBI~~ shall
22 ~~refuse any and all deny the~~ site or building permits ~~or certificates of occupancy~~ for the development
23 project. ~~If the Director of Planning notifies the Director of Building Inspection that the sponsor has~~
24 ~~complied with these conditions or fails to respond within five business days, the Director of Building~~
25 ~~Inspection shall not disapprove a site or building permit or certificate of occupancy pursuant to this~~

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

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

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

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

24 (g) Where the sponsor initially elects to pay a sum and/or contribute land of value
25 equivalent to the in-lieu fee to one or more housing developers, but subsequently decides instead to pay

1 the in-lieu fee, the sponsor shall immediately be liable for the amount of the in-lieu fee under Section
 2 313.6 and interest in accordance with Section 313.9.

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

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

9 10 11	<i>Net Addition Gross Sq. Ft. Entertainment Space</i>	X	\$10.57	=	<i>Total Fee</i>
12 13	<i>Net Addition Gross Sq. Ft. Hotel Space</i>	X	\$8.50	=	<i>Total Fee</i>
14 15	<i>Net Addition Gross Sq. Ft. Office Space</i>	X	\$11.34	=	<i>Total Fee</i>
16 17	<i>Net Addition Gross Sq. Ft. Research and Development</i>	X	\$7.55	=	<i>Total Fee</i>
18 19	<i>Net Addition Gross Sq. Ft. Retail Space</i>	X	\$10.57	=	<i>Total Fee</i>

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

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

24 (c) Prior to the issuance by *the Director of Building Inspection DBI* of the first
25 site or building permit for a development project subject to this ordinance, the sponsor must

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

11 (d) Upon payment of the fee in full to the *Controller Treasurer* and upon
12 request of the sponsor, the *Controller Treasurer* shall issue a certification that the fee has been
13 paid. The sponsor shall present such certification to the *Director of Planning Department, DBI*
14 and the *Director of the Mayor's Office of Housing MOH* prior to the issuance by the *Director of*
15 *Building Inspection DBI* of the first site or building permit ~~or certificate of occupancy~~ for the
16 development project. ~~The Director of Building Inspection shall provide notice in writing to the~~
17 ~~Director of Planning and the Director of the Mayor's Office of Housing at least five business days prior~~
18 ~~to issuing the first site or building permit or certificate of occupancy for any development project~~
19 ~~subject to this Section. If the Director of Planning notifies the Director of Building Inspection and the~~
20 ~~Director of the Mayor's Office of Housing within such time that the sponsor has not complied with the~~
21 ~~provisions of this Section, the Director of Building Inspection DBI shall deny any and all the site or~~
22 ~~building permits or certificates of occupancy not issue the site or building permit without proof of~~
23 ~~payment of the fee from the Treasurer. If the Director of Planning notifies the Director of Building~~
24 ~~Inspection and the Director of the Mayor's Office of Housing that the sponsor has complied with this~~
25 ~~Section, or fails to respond within five business days, a site or building permit or certificate of~~

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

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

18 The sponsor of a development project subject to this ordinance may elect to
19 satisfy its housing requirement by a combination of paying money or contributing land to one
20 or more housing developers under Section 313.5 and paying a partial amount of the in-lieu fee
21 to the ~~Controller~~Treasurer under Section 313.6. In the case of such election, the sponsor must
22 pay a sum such that each gross square foot of net addition of each type of space subject to
23 this ordinance is accounted for in either the payment of a sum or contribution of land to one or
24 more housing developers or the payment of a fee to the ~~Controller~~Treasurer. The housing units
25 constructed by a housing developer must conform to all requirements of this ordinance,

1 including, but not limited to, the proportion that must be affordable to qualifying households as
2 set forth in Section 313.5. All of the requirements of Sections 313.5 and 313.6 shall apply,
3 including the requirements with respect to the timing of issuance of site and building permits
4 and certificates of occupancy for the development project and payment of the in-lieu fee.

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

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

10 (1) Have received final approval under the Interim Guidelines as of August
11 18, 1985, but which have not been applied to a development project because the
12 development project has not been approved by the ~~Director of Planning~~ Department or the
13 Commission or which are in excess of those credits required to satisfy the housing
14 requirement under the Interim Guidelines; or

15 (2) Have received preliminary approval prior to August 18, 1985, received
16 final approval within six months of August 18, 1985, and are in excess of those credits
17 required to satisfy the housing requirement under the Interim Guidelines or this ordinance.
18 This six-month period may be extended for a maximum of two six-month periods where,
19 based upon evidence submitted by the sponsor, the ~~Director of Planning~~ Department or
20 Planning Commission determine within six months of August 18, 1985, or within a six-month
21 extension, that (1) there is good cause for an extension or an additional extension, (2) the
22 failure to obtain final approval of credits is beyond the sponsor's immediate control, and (3)
23 the sponsor has made a reasonable effort to obtain final approval of credits.

24 Excess Interim Guideline credits may be applied against a sponsor's housing
25 requirement under this ordinance on the basis of two and three tenths (2.3) excess Interim

1 Guideline credits against one housing unit required to be provided under Section 313.5.
2 Excess Interim Guideline Credits may be applied against a sponsor's housing requirement
3 under this ordinance only for those projects obtaining project authorizations as defined in
4 Planning Code Section 320(h) on or before February 28, 1999. No excess Interim Guideline
5 Credits may be applied against a sponsor's housing requirement for any project authorization
6 issued after that date. The ~~Director of Planning~~ Department shall notify ~~the Director of the~~
7 ~~Mayor's Office of Housing~~ MOH of credits applied to the sponsor's housing requirement under
8 this Section 313.8(a).

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

20 (1) They have been obtained after the commencement of construction of
21 housing in compliance with all of the requirements of Section 313.5, the payment of a sum or
22 contribution of land to one or more housing developers in compliance with all of the
23 requirements of Section 313.5, or payment of an in-lieu fee to the ~~Controller~~ Treasurer in
24 compliance with all of the requirements of Section 313.6 or a combination of the above under
25 Section 313.7. Compliance with these sections requires construction of the total number of

1 housing units required, the percentage of such units which must be affordable to qualifying
2 households, and the establishment of a mechanism approved by the ~~Director of~~ Planning
3 Department to enforce the requirement that the units constructed will be affordable for 50 years
4 to qualifying households; and

5 (2) The excess credits result from either:

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

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

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

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

18 Excess credits may be applied against a sponsor's housing requirement under
19 this ordinance only for those applications for a building or site permit filed within three years of
20 the date on which the excess credits are issued. The date on which such excess credits are
21 issued shall be the earlier of the sponsor's abandonment of the development project under
22 which the credits were obtained as evidenced by the cancellation of the site or building permit
23 or the site or building permit application, the commencement of construction of each of the
24 housing units under Section 313.5, or the payment of the in-lieu fee under Section 313.6 with
25

1 respect to such credits. No excess credits may be applied against a sponsor's housing
2 requirement for any application for a building or site permit filed after that date.

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

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

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

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

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

19 (e) The City makes no warranties that any excess credits or excess Interim
20 Guidelines credits will be marketable during the period in which this ordinance is in effect or
21 thereafter. The City makes no warranties that an applicant possessing excess credits or
22 excess Interim Guidelines credits is entitled to Commission approval of a development project
23 subject to this ordinance.

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

1 (a) ~~A sponsor's failure to comply with the requirements of Sections 313.5, 313.6 and~~
2 ~~313.7 shall constitute cause for the City to record a lien against the development project in the sum of~~
3 ~~the in-lieu fee required under this ordinance, as adjusted under Section 313.6. The fee required by this~~
4 ~~ordinance is due and payable to the Treasurer prior to issuance of the first building or site permit for~~
5 ~~the office development project. If, for any reason, the fee remains unpaid following issuance of the~~
6 ~~permit, any amount due shall accrue interest at the rate of one and one-half percent per month, or~~
7 ~~fraction thereof, from the date of issuance of the permit until the date of final payment.~~

8 (b) If, for any reason, the fee imposed pursuant to this ordinance remains unpaid
9 following issuance of the permit, the~~The Director of Planning~~ Treasurer shall initiate proceedings in
10 accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire
11 unpaid balance of the fee, including interest, a lien against all parcels used for the development
12 project.~~to impose the lien in accordance with the procedures set forth in Chapter 10, Article XX, of the~~
13 ~~San Francisco Administrative Code,~~ and shall send all notices required by that Article to the
14 owner of the property as well as the sponsor. The ~~Director~~ Treasurer shall also prepare a
15 preliminary report notifying the sponsor of a hearing to confirm such report by the Board of
16 Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall
17 contain the sponsor's name, a description of the sponsor's development project, a description
18 of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for
19 the current year, a description of the alleged violation of this ordinance, and shall fix a time,
20 date, and place for hearing. The ~~Director of Planning~~ Treasurer shall cause this report to be
21 mailed to the sponsor and each owner of record of the parcels of real property subject to lien.
22 Except for the release of lien recording fee authorized by Administrative Code Section 10.237,
23 all sums collected by the Tax Collector pursuant to this ordinance shall be held in trust by the
24 Treasurer and deposited in the Citywide Affordable Housing Fund established in Section
25 313.12.

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

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

10 In the event a building permit expires prior to completion of the work on and
11 commencement of occupancy of a development project so that it will be necessary to obtain a
12 new permit to carry out any development, the obligation to comply with this ordinance 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 Section 3. The San Francisco Planning Code is hereby amended by amending
17 Sections 314.1 and 314.4 to read as follows:

18 **SEC. 314.1. DEFINITIONS.**

19 The following definitions shall govern interpretation of this Section:

- 20 (a) "Child-care facility" shall mean a child day-care facility as defined in
21 California Health and Safety Code Section 1596.750.
- 22 (b) "Child care provider" shall mean a provider as defined in California Health
23 and Safety Code Section 1596.791.
- 24 (c) "Commission" shall mean the City Planning Commission.
- 25 (d) "DBI" shall mean the Department of Building Inspection.

1 (e) “Department” shall mean the Department of City Planning.

2 ~~(e) “Director” shall mean the Director of City Planning or his or her designee,~~
3 ~~including other City agencies or departments.~~

4 (f) “First certificate of occupancy” shall mean either a temporary certificate of
5 occupancy or a Certificate of Final Completion and Occupancy, as defined in San Francisco
6 Building Code Section 109, whichever is issued first.

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

12 (h) “Hotel use” shall mean space within a structure or portion thereof
13 intended or primarily suitable for the operation of a hotel, including all office and other uses
14 accessory to the renting of guest rooms, but excluding retail uses and office uses not
15 accessory to the hotel use.

16 (i) “Household of low income” shall mean a household composed of one or
17 more persons with a combined annual net income for all adult members which does not
18 exceed the qualifying limit for a lower-income family of a size equivalent to the number of
19 persons residing in such household, as set forth for the County of San Francisco in California
20 Administrative Code Section 6932.

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

1 (k) "Licensed child-care facility" shall mean a child-care facility which has been
2 issued a valid license by the California Department of Social Services pursuant to California
3 Health and Safety Code Sections 1596.80—1596.875, 1596.95—1597.09, or 1597.30—
4 1597.61.

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

12 (m) "Net addition of gross square feet of office space" shall mean gross floor
13 area as defined in Planning Code Section 102.9 to be occupied by, or primarily serving, office
14 use, less the gross floor area in any structure demolished or rehabilitated as part of the
15 proposed office 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 office development project subject to this Section, or for the life of
18 the structure demolished or rehabilitated, whichever is shorter.

19 (n) "Nonprofit child-care provider" shall mean a child-care provider that is an
20 organization organized and operated for nonprofit purposes within the provisions of California
21 Revenue and Taxation Code Sections 23701—23710, inclusive, as demonstrated by a written
22 determination from the California Franchise Tax Board exempting the organization from taxes
23 under Revenue and Taxation Code Section 23701.

24 (o) "Nonprofit organization" shall mean an organization organized and
25 operated for nonprofit purposes within the provisions of California Revenue and Taxation

1 Code Sections 23701—23710, inclusive, as demonstrated by a written determination from the
2 California Franchise Tax Board exempting the organization from taxes under Revenue and
3 Taxation Code Section 23701.

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

7 (q) “Office use” shall mean space within a structure or portion thereof
8 intended or primarily suitable for occupancy by persons or entities which perform, provide for
9 their own benefit, or provide to others at that location services including, but not limited to, the
10 following: Professional, banking, insurance, management, consulting, technical, sales and
11 design, or the office functions of manufacturing and warehousing businesses, but excluding
12 retail uses; repair; any business characterized by the physical transfer of tangible goods to
13 customers on the premises; wholesale shipping, receiving and storage; space primarily used
14 for, or where the most recent use was primarily for, the display of goods, wares, or merchandise,
15 including but not limited to: (1) showrooms, design showrooms, and design showcases, (2) space
16 displaying goods, wares, and merchandise either as samples or for sale, (3) space in which the
17 occupants negotiate sales transactions, (4) display space in buildings that also contain office use, and
18 (5) space actually used for display of goods, wares, and merchandise even if intended and primarily
19 suitable for offices; ~~design showcases or any other space intended and primarily suitable for display of~~
20 goods; and child-care facilities. This definition shall include all uses encompassed within the
21 meaning of Planning Code Section 219.

22 (r) “Retail use” shall mean space within any structure or portion thereof
23 intended or primarily suitable for occupancy by persons or entities which supply commodities
24 to customers on the premises including, but not limited to, stores, shops, restaurants, bars,
25

1 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220
2 through 225, and also including all space accessory to such retail use.

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

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

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

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

22 (3) Any person may appeal the initial determination by delivering an appeal
23 in writing to the Department within 15 days of such notice. If the initial determination is not
24 appealed within the time allotted, the initial determination shall become a final determination.
25 If the initial determination is appealed, the Commission shall schedule a public hearing prior to

1 the approval of the development project by the Commission or the Department to determine
2 the net addition of gross square feet of office or hotel space subject to this Section. The public
3 hearing may be scheduled separately or simultaneously with a hearing under City Planning
4 Code Sections 139, 306.2, 309(h), ~~313.4, 315.3~~ or a Discretionary Review hearing under
5 San Francisco Municipal Code [Part III] Section 26. The Commission shall make a final
6 determination of the net addition of gross square feet at the hearing.

7 (4) The final determination of the net addition of gross square feet of office or
8 hotel space subject to this Section shall be set forth in the conditions of approval relating to
9 the child-care requirement in any building or site permit application approved by the
10 Department or the Commission. The Department shall notify the Treasurer of the final
11 determination of the net addition of gross square feet of office or hotel space subject to this ordinance
12 within 30 days of the date of the final determination. ~~The Director~~ Department shall notify the
13 Treasurer and Director of the Department of Building Inspections DBI that the development project
14 is subject to this Section ~~at~~ prior to the time the Department or the Commission approves the
15 permit application.

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

22 (A) A space on the premises of the development project has been provided
23 to a nonprofit child-care provider without charge for rent, utilities, property taxes, building
24 services, repairs, or any other charges of any nature, as evidenced by a lease and an
25

1 operating agreement between the sponsor and the provider with minimum terms of three
2 years;

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

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

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

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

15 (2) The sponsor of a development project subject to this Section in
16 conjunction with the sponsors of one or more other development projects subject to this
17 Section located within ½ mile of one another may elect to provide a single child-care facility on
18 the premises of one of their development projects for the life of the project to meet the
19 requirements of this Section. The sponsors shall, prior to the issuance of the first certificate of
20 occupancy by ~~the Director of the Department of Building Inspections DBI~~ for any one of the
21 development projects complying with this part, provide proof to the Treasurer and the Director of
22 Planning Department that:

23 (A) A space on the premises of one of their development projects has been
24 provided to a nonprofit child-care provider without charge for rent, utilities, property taxes,
25 building services, repairs, or any other charges of any nature, as evidenced by a lease and an

1 operating agreement between the sponsor in whose project the facility will be located and the
2 provider with minimum terms of three years;

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

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

<p>6 Combined net 7 add. 8 Gross. Sq. Ft. 9 Office 10 Or hotel space 11 of 12 All participating 13 Dev. Projects</p>	<p>14 X</p>	<p>15 \$.01</p>	<p>16 =</p>	<p>17 Sq. Ft. of 18 Child Care 19 Facility</p>
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20 In the event that the net addition of gross square feet of office or hotel space of all
21 participating projects is less than 300,000 square feet, the child-care facility may have a
22 minimum gross floor area of 2,000 square feet or the area determined according to the above
23 formula, whichever is greater; and

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

(3) The sponsor of a development project subject to this Section, either
singly or in conjunction with the sponsors of one or more other development projects subject
to this Section located within ½ mile of one another, may elect to provide a single child-care
facility to be located within one mile of the development project(s) to meet the requirements of
this Section. Subject to the discretion of the *Director/Department*, the child-care facility shall be
located so that it is reasonably accessible to public transportation or transportation provided

1 by the sponsor(s). The sponsor(s) shall, prior to the issuance of the first certificate of
 2 occupancy by ~~the Director of the Department of Building Inspections DBI~~ for any development
 3 project complying with this part, provide proof to the Treasurer and the Director of Planning
 4 Department that:

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

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

10 (C) The child-care facility has a minimum gross floor area of 3,000 square
 11 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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 17 In the event that the net addition of gross square feet of office or hotel space of all
 18 participating projects 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 written agreement binding each of the participating project sponsors,
 22 with a term of 20 years from the date of issuance of the first certificate of occupancy for any
 23 development project complying with this part, guaranteeing that a child-care facility will be
 24 leased or subleased to one or more nonprofit child-care providers for as long as there is a
 25

demonstrated demand under Subsection (h) of this Section 314.4 has been executed and recorded in the chain of title of each participating building.

(4) The sponsor of a development project subject to this Section may elect to 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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Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of the sponsor, the ~~Controller~~ Treasurer shall issue a certification that the fee has been paid. The sponsor shall present such certification to the ~~Director~~ Department prior to the issuance by ~~the Director of the Department of Building Inspections DBI~~ of the first certificate of occupancy building or site permit for the development project.

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

<i>Net. Add gross sq. ft. space subject project</i>	-	[<i>Net. add. gross Sq. Ft. Space Subject Project Net. add grossSq. Ft. Space all</i>	X	<i>Sq. Ft. Child-care facility</i>	X	100	X	10 0	X	\$1.00]	=	<i>Total Fee for Subject Project</i>
---------------------------------------------------------------------	---	---	------------------------------------------------------------------------------------------------------	---	--------------------------------------------	---	-----	---	---------	---	--------	---	---	----------------------------------------------

			<i>participating projects</i>											
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(6) The sponsor of a development project subject to this Section may elect to satisfy its child-care requirement by entering into an arrangement pursuant to which a nonprofit organization will provide a child-care facility at a site within the City. The sponsor shall, prior to the issuance of the first certificate of occupancy by ~~the Director of the Department of Building Inspection~~ DBI for the development project, provide proof to the Treasurer and the Department Director of Planning that:

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

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

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

(D) The nonprofit organization has executed and recorded a binding written agreement, with a term of 20 years from the date of issuance of the first certificate of occupancy for the development project, pursuant to which the nonprofit organization

1 guarantees that it will operate a child-care facility or it will lease or sublease a child-care
2 facility to one or more nonprofit child-care providers for as long as there is a demonstrated
3 need under Subsection (h) of this Section 314.4, and that it will comply with all of the
4 requirements imposed on the nonprofit organization under this Paragraph (b)(6) and imposed
5 on a sponsor under Subsections (g), (h) and (i) of Section 314.4.

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

10 (F) The Department of Children, Youth and Their Families has determined
11 that the proposed child-care facility will help meet the needs identified in the San Francisco
12 Child Care Needs Assessment and will be consistent with the City Wide Child Care Plan;
13 provided, however, that this Paragraph (F) shall not apply to any office or hotel development
14 project approved by the Planning Department or the Planning Commission prior to December
15 31, 1999.

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

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

3 (c) If the sponsor is liable for an in-lieu fee pursuant to this section, such fee shall be
4 due prior to issuance of the first site or building permit for the project. Upon payment of the fee in full
5 to the Treasurer and upon request of the sponsor, the Treasurer shall issue a certification that the fee
6 has been paid. The sponsor shall present such certification to DBI prior to the issuance by DBI of the
7 first site or building permit for the development project. The Director of the Department of Building
8 Inspections shall provide notice in writing to the Director of Planning at least five business days prior
9 to issuing the first certificate of occupancy for any development project subject to this Section. If the
10 Director of Planning notifies the Director of the Department of Building Inspections within such time
11 that the sponsor has not complied with the provisions of this Section, the Director of the Department of
12 Building Inspections DBI shall not issue the site or building permit without proof of payment of the fee
13 from the Treasurer deny any and all certificates of occupancy. If the Director of Planning notifies the
14 Director of the Department of Building Inspections that the sponsor has complied with this Section or
15 fails to respond within five business days, a certificate of occupancy shall not be disapproved pursuant
16 to this Section. Any failure of the Treasurer, DBI, Director of the Department of Building Inspections
17 or the Director of Planning Department to give any notice under this Subsection shall not relieve
18 a sponsor from compliance with this Section. Where DBI inadvertently issues a site or building
19 permit without payment of the fee, DBI shall not issue any certificate of occupancy for the project
20 without notification from the Treasurer that the fee required by this Section has been paid. The
21 procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this
22 section under any other section of this Code, or other authority under the laws of the State of
23 California.

24 (d) In the event that the Department or the Commission takes action affecting
25 any development project subject to this Section and such action is thereafter modified,

1 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals,
2 the Board of Supervisors, or by court action, the permit application for such office
3 development project shall be remanded to the Department or Commission ~~for a hearing~~ within
4 60 days ~~of following~~ the date on which such action is final to determine whether the proposed
5 project has been changed in a manner which affects the area of the child-care facility or the
6 amount of the in-lieu fee to be provided under this Section 314.4 and, if so, the Department or
7 the Commission shall revise the child-care requirement imposed on the permit application in
8 compliance with this Section, and shall promptly notify the Treasurer and DBI of that revision.

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

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

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

- 21 (1) The address of the child-care facility;
- 22 (2) The name and address of the child-care provider operating the facility;
- 23 (3) The size of the center in terms of floor area;
- 24 (4) The capacity of the child-care facility in terms of the maximum number of
25 children for which the facility is authorized to care under the license;

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

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

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

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

12
13
14
15 Planning Code Section 306.3(a) at least two months prior to the hearing. The application may
16 be granted only where the sponsor has demonstrated that there is insufficient demand for the
17 amount of floor area then devoted to the on-site or near-site child-care facility. The actual
18 reduction in floor area or elimination of the child-care facility shall not be permitted in any case
19 until six months after the application is granted. Such application may be made only five
20 years or more after the issuance of the first certificate of occupancy for the project. Prior to
21 the reduction in floor area or elimination of the child care facility, the sponsor shall pay an in-
22 lieu fee to the City's ~~Controller~~ Treasurer to be computed as follows:
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1 Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of the
2 sponsor, the ~~Controller~~ Treasurer shall issue a certification that the fee has been paid. The
3 sponsor shall present such certification to the Director prior to the reduction in the floor area or
4 elimination of the child care facility.

5 (i) The child care provider operating any child care facility pursuant to Sections
6 314.4(b)(1), (2), (3) or (5) shall reserve at least 10 percent of the maximum capacity of the
7 child care facility as determined by the license for the facility issued by the California
8 Department of Social Services to be affordable to children of households of low income. The
9 ~~Director~~ Department shall adopt rules and regulations to determine the rates to be charged to
10 such regulations under Section 314.5.

11 (j) The fee required by this ordinance is due and payable to the Treasurer prior to issuance
12 of the first building or site permit for the office development project. Except in the case of a reduction
13 in space of the child care facility pursuant to Subsection (h), if the fee remains unpaid following
14 issuance of the permit, any amount due shall accrue interest at the rate of one and one-half percent per
15 month, or fraction thereof, from the date of issuance of the permit until the date of final payment.
16 Where the amount due is as a result of a reduction in space of the child care facility pursuant to
17 subsection (h), such interest shall accrue from the date on which the available space is reduced until
18 the date of final payment.

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

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

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

11 (2) If, for any reason, the fee imposed pursuant to this ordinance remains unpaid
12 following issuance of the permit, the Treasurer shall initiate proceedings in accordance with the
13 procedures set forth in Article XX of Chapter 10, of the San Francisco Administrative Code to make the
14 entire unpaid balance of the fee, including interest, a lien against all parcels used for the development
15 project. The Treasurer shall send all notices required by that Article to the owner of the property as
16 well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the sponsor of a
17 hearing to confirm such report by the Board of Supervisors at least 10 days before the date of the
18 hearing. The report to the sponsor shall contain the sponsor's name, a description of the sponsor's
19 development project, a description of the parcels of real property to be encumbered as set forth in the
20 Assessor's Map Books for the current year, a description of the alleged violation of this ordinance, and
21 shall fix a time, date, and place for hearing. The Treasurer shall cause this report to be mailed to the
22 sponsor and each owner of record of the parcels of real property subject to lien. Except for the release
23 of lien recording fee authorize by Administrative Code Section 10.237, all sums collected by the Tax
24 Collector pursuant to this ordinance shall be held in trust by the Treasurer and deposited in the Child
25 Care Capital Fund established in Section 314.5.

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

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

9 **Section 315.3: APPLICATION**

10 (a) This Ordinance shall apply to

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

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

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

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

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

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

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

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

- 1 (A) consist of ten or more units; and
- 2 (B) consist of live/work units as defined by Planning Code Section 102.13.
- 3 (4) housing projects which require Planning Commission approval of replacement
- 4 housing destroyed by earthquake, fire or natural disaster only where the destroyed housing
- 5 included units restricted under the Residential Inclusionary Housing Program or the City's
- 6 predecessor inclusionary housing policy, condominium conversion requirements, or other
- 7 affordable housing program.

8 (b) This Ordinance shall not apply to:

9 (1) that portion of a housing project located on property owned by the United States

10 or any of its agencies or leased by the United States or any of its agencies for a period in

11 excess of 50 years, with the exception of such property not used exclusively for a

12 governmental purpose;

13 (2) that portion of a housing project located on property owned by the State of

14 California or any of its agencies, with the exception of such property not used exclusively for a

15 governmental or educational purpose; or

16 (3) that portion of a housing project located on property under the jurisdiction of the

17 San Francisco Redevelopment Agency or the Port of San Francisco where the

18 application of this Ordinance is prohibited by California or local law;

19 (4) that portion of a housing project for which a project applicant can demonstrate

20 that an impact fee under the Jobs-Housing Linkage Program, commencing with

21 Planning Code Section 313, has been paid.

22 (c) Waiver or Reduction:

23 (1) A project applicant of any project subject to the requirements in this Program

24 may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the

25 requirements based upon the absence of any reasonable relationship or nexus between the

1 impact of development and either the amount of the fee charged or the inclusionary
2 requirement.

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

9 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no
10 later than 15 days after the date the Planning Department sends notice to the project
11 applicant of the number of affordable units required as provided in Section 315.4(a) and
12 315.5(a). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,
13 reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing
14 within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting
15 substantial evidence to support the appeal including comparable technical information to
16 support appellant's position. The decision of the Board shall be by a simple majority vote and
17 shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the
18 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary
19 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall
20 promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.

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

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

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

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

7 (b) The amount of the fee which may be paid by the project applicant subject to this
8 ordinance in lieu of developing and providing housing required by Section 315.4 shall be
9 determined by Mayor's Office of Housing ("MOH") utilizing the following factors:

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

12 (2) The affordability gap as identified in the "Jobs Housing Nexus Analysis"
13 prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or
14 Maximum Purchase Price for the equivalent unit sizes.

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

25

1 (c) Within 30 days of determining the amount of the fee to be paid by the applicant, MOH
2 shall transmit the amount of the fee to the Treasurer. Prior to the issuance by ~~the Director of~~
3 ~~Building Inspection DBI~~ of the first site or building permit for the project applicant, the project
4 applicant must notify the ~~Director of Planning Department~~ and ~~the Director of the Mayor's Office~~
5 ~~of Housing MOH~~ in writing that it has paid in full the sum required to the ~~Controller~~Treasurer. If
6 the project applicant fails by the applicable date to demonstrate to the ~~Director of Planning~~
7 ~~Department~~ that the project applicant has paid the applicable sum in full to the
8 ~~Controller~~Treasurer, ~~the Director of Building Inspection DBI~~ shall deny any and all site or building
9 permits or certificates of occupancy for the development project until the ~~Director of Planning~~
10 ~~Department~~ 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.

12 (d) Upon payment of the fee in full to the ~~Controller~~ Treasurer and upon request of
13 the project applicant, the ~~Controller~~ Treasurer shall issue a certification that the fee has been
14 paid. The project applicant shall present such certification to the ~~Director of Planning~~
15 ~~Department, DBI~~ and ~~the Director of the Mayor's Office of Housing MOH~~ prior to the issuance by
16 ~~the Director of Building Inspection DBI~~ of the first site or building permit or certificate of
17 occupancy for any development subject to this Section. ~~If the Director of Planning notices the~~
18 ~~Director of Building Inspection and the Director of the Mayor's Office of Housing that the sponsor has~~
19 ~~complied with this Section, or fails to respond within five business days, a site or building permit or~~
20 ~~certificate of occupancy shall not be disapproved pursuant to this Section.~~ Any failure of the
21 ~~Treasurer, DBI, Director of Building Inspection~~ or ~~the Director of Planning Department~~ to give any
22 notice under this Section shall not relieve a project applicant from compliance with this
23 Section. Where DBI inadvertently issues a site or building permit without payment of the fee, DBI
24 shall not issue any certificate of occupancy for the project without notification from the Treasurer that
25 the fee required by this Section has been paid. The procedure set forth in this Subsection is not

1 intended to preclude enforcement of the provisions of this section pursuant to any other section of this
2 Code, or other authority under the laws of the State of California. ~~Where the Director of Building~~
3 ~~Inspection issues any site of building permit or certificate of occupancy for the development project in~~
4 ~~error, or where a sponsor fails for any reason to pay the in-lieu fee to the Controller in compliance~~
5 ~~with this Section prior to the Director of Building Inspection's issuance of the first site or building~~
6 ~~permit or certificate of occupancy for the development project, the Director of Planning shall~~
7 ~~immediately initiate lien proceedings against the development project under Section 315.6(f) to recover~~
8 ~~the fee, and the Director of Building Inspection shall revoke any permit or certificate issued in error~~
9 ~~and refuse any site or building permit or certificate of occupancy until the project applicant has~~
10 ~~complied with this Section.~~

11 (e) All monies contributed pursuant to this section shall be deposited in the special
12 fund maintained by the Controller called the Citywide Affordable Housing Fund. The receipts
13 in the Fund are hereby appropriated in accordance with law to be used solely to (1) increase
14 the supply of housing affordable to qualifying households subsection subject to the conditions
15 of this Section, and (2) pay the expenses of ~~the Mayor's Office of Housing~~ MOH in connection
16 with monitoring and administering compliance with the requirements of the Program.
17 Monitoring and administrative expenses shall be appropriated through the annual budget
18 process or supplemental appropriation for ~~the Mayor's Office of Housing~~ MOH. The fund shall
19 be administered and expended by ~~the Director of the Mayor's Office of Housing~~ MOH, who which
20 shall have the authority to prescribe rules and regulations governing the Fund which are
21 consistent with this Section.

22 (f) Lien Proceedings

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

1 (2) ~~The Director of Planning~~ If, for any reason, the fee imposed pursuant to this ordinance
2 remains unpaid following issuance of the permit, the Treasurer shall initiate proceedings to impose
3 the lien in accordance with the procedures set forth in Chapter 10, Article XX, of the San
4 Francisco Administrative Code to make the entire unpaid balance of the fee, including interest, a lien
5 against all parcels used for the development project. The Treasurer, ~~and~~ shall send all notices
6 required by that Article to the owner of the property as well as the sponsor. The ~~Director~~
7 Treasurer shall also prepare a preliminary report notifying the sponsor of a hearing to confirm
8 such report by the Board of Supervisors at least 10 days before the date of the hearing. The
9 report to the sponsor shall contain the sponsor's name, a description of the sponsor's
10 development project, a description of the parcels of real property to be encumbered as set
11 forth in the Assessor's Map Books for the current year, a description of the alleged violation of
12 this ordinance, and shall fix a time, date, and place for hearing. The ~~Director of Planning~~
13 Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the
14 parcels of real property subject to lien. Except for the release of lien recording fee authorize
15 by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to
16 this ordinance shall be held in trust by the Treasurer and deposited in the Citywide Affordable
17 Housing Fund established in Section 313.12.

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

25

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

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

14 Section 5. The San Francisco Administrative Code is hereby amended by amending
15 Sections 38.1, 38.3, 38.4, 38.5, 38.8, 38.8.5, 38.10 and 38.11 to read as follows:

16 **SEC. 38.1. DEFINITIONS.**

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

18 (a) Board. The Board of Supervisors of the City and County of San
19 Francisco.

20 (b) "Certificate of Final Completion and Occupancy" shall mean a certificate
21 of final completion and occupancy issued by any authorized entity or official of the City and
22 County of San Francisco including the ~~Superintendent, Bureau~~ Director of the Department of
23 Building Inspection, pursuant to the Building Code.

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

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

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

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

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

17 ~~(g)~~(h) Office Use. Any structure or portion thereof intended for occupancy by
18 business entities which will primarily provide clerical, professional or business services of the
19 business entity, or which will primarily provide clerical, professional or business services to
20 other business entities or to the public, at that location. Among uses excluded from the definition
21 of "office use" are the following uses, including space devoted to the management or administration of
22 the uses, located in the same structure, building, or portion thereof: transient lodgings; sale of
23 merchandise or personal services at retail to the public; storage of goods; buildings or portions thereof
24 exclusively devoted to machines, computer equipment, telephone equipment, mechanical equipment,
25 electrical equipment, or other utility operations; a building or portion thereof exclusively devoted to the

1 storage of money, valuable securities or other valuables; manufacturing activities; residences; and
2 space primarily used for, or where the most recent use was primarily for, the display of goods, wares,
3 or merchandise, including but not limited to: (1) showrooms, design showrooms, and design
4 showcases, (2) space displaying goods, wares, and merchandise either as samples or for sale, (3) space
5 in which the occupants negotiate sales transactions, (4) display space in buildings that also contain
6 office use, and (5) space actually used for display of goods, wares, and merchandise even if intended
7 and primarily suitable for offices. Where the words “office space” are used in this ordinance
8 they shall mean the same as “office use.”

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

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

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

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

21 **SEC. 38.3. PURPOSES.**

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

25

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

6 The Transit Impact Development Fee is the most practical and equitable method
7 of financing the construction and operation of required public transit service additions and
8 improvements for the Downtown Area. This fee is intended to recover all costs incurred by the
9 Municipal Railway in meeting peak-period public transit service demands created by office
10 uses in each new development subject to the fee, including the expansion of service capacity
11 through the purchase of rolling stock, the installation of new lines, the addition to existing lines
12 and the long term operation, maintenance, repair and replacement of those expanded
13 facilities.

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

24
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1 The Transit Impact Development Fee shall be collected as a condition for the
2 issuance of a ~~certificate of final completion and occupancy~~ site or building permit for new
3 development in the Downtown Area.

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

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

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

12 A. Each ~~developer~~ sponsor of a new development in the Downtown Area shall
13 pay to the City and County of San Francisco and deliver to the Treasurer prior to ~~upon~~ the
14 issuance of the initial building or site permit ~~any temporary permit of occupancy and as a condition~~
15 ~~precedent to issuance of any certificate of final completion and occupancy whichever occurs first~~, for
16 such new development in the Downtown Area, a Transit Impact Development Fee. That fee
17 shall be calculated on the basis of the number of gross square feet of office use added by the
18 new development, multiplied by the per square foot rate in effect (a) on the effective date of
19 this ordinance for new developments for which building permits were issued prior to the
20 effective date hereof, and (b) on the date of the filing of the building permit application as to all
21 other new development. The rate shall be established as a current estimate of the total cost
22 incurred by the City and County providing the additional peak-period Municipal Railway transit
23 capacity necessitated by the public transit service needs generated by office uses in the new
24 development over its estimate useful life.

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

7 C. Except as provided in Section 38.4(D) herein, the fee imposed by this
8 ordinance shall be payable with respect to (1) all new developments in the Downtown Area for
9 which building or site permits are issued on or after ~~the effective date of this ordinance~~ June 5,
10 1981, (2) such new developments in the Downtown Area for which building permits were
11 issued prior to ~~the effective date of this ordinance~~ June 5, 1981 where the developers had, in
12 receiving approval by the City Planning Commission, committed themselves to pay a
13 reasonable fee or participate in an assessment district or other financing mechanism designed
14 to enable the City and County to provide and operate additional peak-period public transit
15 service necessary to accommodate the additional number of peak-period public transit service
16 person-trips generated by office use in the new development, and (3) all other new
17 developments in the Downtown Area for which building permits were issued prior to ~~the~~
18 ~~effective date of this ordinance~~ June 5, 1981 but which had not received a certificate of final
19 completion and occupancy prior to ~~the effective date of this ordinance~~ that date.

20 D. The fee imposed by this ordinance shall not be payable with respect to
21 new construction or the addition, alteration, conversion, enlargement, extension, or
22 rehabilitation of an existing structure for which a valid building permit was issued prior to ~~the~~
23 ~~effective date of this ordinance~~ (June 5, 1981), if:
24
25

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

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

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

11 (b) In the case of addition, alteration, conversion, enlargement, extension or
12 rehabilitation of an existing building not otherwise described in paragraph (1) above, any work
13 has been performed to change the configuration of space in the existing structure by the
14 movement of walls or otherwise.

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

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

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

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

24 (3) The date of issuance of a final certificate of occupancy.
25

1 F. (1) As to those developments subject to the Transit Impact
2 Development Fee for which building permits have been issued prior to ~~the effective date of this~~
3 ~~ordinance June 5, 1981~~, the Transit Impact Development Fee shall be payable on ~~the effective~~
4 ~~that date of this ordinance~~ unless on that date none of the following has occurred:

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

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

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

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

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

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

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

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

19 (3) By electing to defer payment by delivery to the City and County a written
20 election acknowledging the obligation therefor, the owner of the new development may
21 obligate itself to pay the fee in monthly installments of interest only, at the rate of one percent
22 per month, for a period of five years, and thereafter in level monthly payments of principal and
23 interest, at the rate of one percent per month on the outstanding balance amortizing over (1)
24 the remaining useful life of the development, or (2) 30 years, whichever is the shorter, such
25

1 payments to be made on or before the first day of each calendar month during the payment
2 period.

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

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

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

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

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

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

25

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

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

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

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

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

20 (g) Where feasible, actual information for the fiscal year for which the fee is
21 being calculated should be used. Where estimates must be made, those estimates should be
22 based on such information as the ~~General Manager of the Public Utilities Commission~~ Director or
23 his or her delegate considers reasonable for the purpose. Possible changes in the operation
24 or productivity of the Municipal Railway shall be taken into account only if such changes are
25 the announced policy of the Municipal Railway or the ~~Public Utilities Commission~~ Municipal

1 Transportation Agency and the impact of such change on peak-period costs or revenues can be
2 estimated with reasonable certainty.

3 The Transit Impact Fee Schedule shall be as follows:
4 FOR EACH GROSS SQUARE FOOT OF OFFICE USE IN NEW DEVELOPMENT IN THE
5 DOWNTOWN AREA, \$5.00*.

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

7 **SEC. 38.6. ADJUSTMENTS TO AND REVIEW OF THE TRANSIT IMPACT**
8 **DEVELOPMENT FEE SCHEDULE.**

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

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

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

24 The ~~General Manage~~ Director shall also report the projected annual increases in
25 the cost per peak-period Municipal Railway person-trip necessary to provide the necessary

1 additional transit services during the estimated useful lives of new developments. Finally, the
2 ~~General Manager~~ Director shall report the estimated annual rate of return on the proceeds of
3 this fee which would be invested prior to their use to provide the necessary additional transit
4 services during the useful lives of new developments.

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

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

25

1 The rates of the fee schedule shall be set at an actuarially sound level to insure
2 that the proceeds will be sufficient to pay for all capital and operating costs incurred in
3 providing and operating additional required peak-period capacity, including such earnings as
4 may be derived from investment of the proceeds and amortization thereof, over the life of
5 such new developments; provided, however, that said sum may not, for any category of useful
6 life, exceed \$5 per square foot.

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

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

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

1 of transit services included in such fees or assessments which are also included in the Transit
2 Impact Development Fee.

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

10 **SEC. 38.8. SETTING OF FEE.**

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

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

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

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

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

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

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

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

25

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

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

21 (1) The ~~General Manager~~ Treasurer or his or her designee may cause the
22 County Recorder to record a notice of delinquent transit impact development fee which shall
23 include: (a) The amount of the delinquent fee; (b) the amount of the entire fee as reflected on
24 the final determination and a statement of whether the fee is payable in installment; (c) the
25 fee, interest and penalty then due; (d) the interest and penalties that shall accrue on the

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

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

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

24 (4) The ~~General Manager~~ Treasurer shall serve or mail the notice that the
25 transit impact development fee delinquency has been cured, referred to in Section 38.10B(3)

1 of this ordinance, to the persons liable for the fee and to the owners of the real property
2 described in such notice.

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

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

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

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

21 **SEC. 38.10-1. COLLECTION OF FEE AND IMPOSITION OF INTEREST ON NEW**
22 **PROJECTS.**

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

25

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

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

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

9 (a) For projects subject to Section 38.10, if ~~if~~ payment of the fee not payable in
10 installments is not received within 30 days following mailing of the additional request and
11 notice or if with respect to installment payments the account is not brought current within 60
12 days of the mailing of the additional request and notice, *or, for projects subject to Section 38.10-*
13 *1, the fee remains unpaid following issuance of the permit, the ~~General Manager of the Public Utilities~~*
14 ~~Commission~~ *Treasurer* shall initiate proceedings in accordance with Article XX of Chapter 10 of
15 the San Francisco Administrative Code to make the entire unpaid balance of the Transit
16 Impact Development Fee, including interest on the unpaid fee or installments a lien *against all*
17 *parcels used for the development project. The Treasurer shall send all notices required by that Article*
18 *to the owner of the property as well as the sponsor. The Treasurer shall also prepare a preliminary*
19 *report notifying the sponsor of a hearing to confirm such report by the Board of Supervisors at least 10*
20 *days before the date of the hearing. The report to the sponsor shall contain the sponsor's name, a*
21 *description of the sponsor's development project, a description of the parcels of real property to be*
22 *encumbered as set forth in the Assessor's Map Books for the current year, a description of the alleged*
23 *violation of this ordinance, and shall fix a time, date, and place for hearing. The Treasurer shall cause*
24 *this report to be mailed to the sponsor and each owner of record of the parcels of real property subject*
25 *to lien against the property served. Such charges against delinquent accounts shall be reported to the*

1 ~~Board at least once each year.~~ Except for the release of lien recording fee authorized by
2 Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to this
3 ordinance shall be held in trust by the Treasurer and distributed as provided in Section 38.6 of
4 this Chapter.

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

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 DAVID A. GREENBURG
16 Deputy City Attorney

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