AMENDING PART II, CHAPTER II, OF THE SAN FRANCISCO MUNICIPAL CODE (PLANNING CODE) BY AMENDING SECTIONS 314.1 AND 314.4 TO ALLOW A DEVELOPER TO SATISFY THE 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.

Note: Additions are underlined; deletions are in ((double parentheses)).

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

Section 1. Article 3 of the San Francisco Planning Code is hereby amended by amending Section 314.1, to read as follows:

SEC. 314.1. DEFINITIONS. The following definitions shall govern interpretation of this Section:

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

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

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

(d) "Department" shall mean the Department of City Planning.

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

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

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

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

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

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

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

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

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

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

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

((o)) (p) “Office development project” shall mean any new construction, addition,
extension, conversion or enlargement, or combination thereof, of an existing structure which
includes any gross square feet of office space.
"Office use" shall mean space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: Professional, banking, insurance, management, consulting, technical, sales and design, or the office functions of manufacturing and warehousing businesses, but excluding retail uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; design showcases or any other space intended and primarily suitable for display of goods; and child-care facilities. This definition shall include all uses encompassed within the meaning of Planning Code Section 219.

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

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

"Superintendent" shall mean the Superintendent, Bureau, Department of Building Inspection.

Section 2. Article 3 of the San Francisco Planning Code is hereby amended by amending Section 314.4, to read as follows:

SEC. 314.4. IMPOSITION OF CHILD CARE REQUIREMENT. (a) (1) The Department or the Commission shall impose conditions on the approval of building or site...
permit applications for office or hotel development projects covered by this Section in order to
mitigate the impact on the availability of child-care facilities which will be caused by the
employees attracted to the proposed development project. The conditions shall require that
the sponsor((, either singly or in conjunction with the sponsors of other office or hotel
development projects,)) construct or provide a child-care facility on or near the site of the
development project, either singly or in conjunction with the sponsors of other office or hotel
development projects, or arrange with a nonprofit organization to provide a child-care facility
at a location within the City, or pay an in-lieu fee to the City Controller which shall thereafter
be used exclusively to foster the expansion of and ease access to child-care facilities
affordable to households of low or moderate income.

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

(3) Any person may appeal the initial determination by delivering an appeal in
writing to the Department within 15 days of such notice. If the initial determination is not
appealed within the time allotted, the initial determination shall become a final determination.
If the initial determination is appealed, the Commission shall schedule a public hearing prior to
the approval of the development project by the Commission or the Department to determine
the net addition of gross square feet of office or hotel space subject to this Section. The public
hearing may be scheduled separately or simultaneously with a hearing under City Planning
Code Sections 306.2, 309(h) or 313.4, or a Discretionary Review hearing under San
determination of the net addition of gross square feet at the hearing.
(4) The final determination of the net addition of gross square feet of office or hotel space subject to this Section shall be set forth in the conditions of approval relating to the child-care requirement in any building or site permit application approved by the Department or the Commission. The Director shall notify the ((Superintendent)) Director of the Department of Building Inspection that the development project is subject to this Section at the time the Department or the Commission approves the permit application.

(b) (1) The sponsor of a development project subject to this Section may elect to provide a child-care facility on the premises of the development project for the life of the project to meet the requirements of this Section. The sponsor shall, prior to the issuance of the first certificate of occupancy by the ((Superintendent)) Director of the Department of Building Inspection for the development project, provide proof to the Director of Planning that:

(A) A space on the premises of the development project has been provided 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 and an operating agreement between the sponsor 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;

\[
\text{Net add. gross sq. ft. off. or hotel space} \times 0.01 = \text{sq. ft. of child-care facility}
\]

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

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

(2) The sponsor of a development project subject to this Section in conjunction with the sponsors of one or more other development projects subject to this Section located within 1/2 mile of one another may elect to provide a single child-care facility on the premises of one of their development projects for the life of the project to meet the requirements of this Section. The sponsors shall, prior to the issuance of the first certificate of occupancy by the ((Superintendent)) Director of the Department of Building Inspection for any one of the development projects complying with this part, provide proof to the Director of Planning that:

(A) A space on the premises of one of their development projects has been provided 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 and an operating agreement between the sponsor in whose project the facility will be located 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:

\[
\text{Combined net add. gross sq. ft. office or hotel space of all participating dev. projects} \times 0.01 = \text{sq. ft. of child-care facility}
\]

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

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(D) A written agreement binding each of the participating project sponsors 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 ((Part)) 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 1/2 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, the child-care facility shall be located so that it is reasonably accessible to public transportation or transportation provided by the sponsor(s). The sponsor(s) shall, prior to the issuance of the first certificate of occupancy by the ((Superintendent)) Director of the Department of Building Inspection for any development project complying with this part, provide proof to the Director of Planning that:

(A) A space has been provided 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 sponsor(s) 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:

\[
\text{Combined net add. gross sq. ft. office or hotel space of all participating dev. projects} \times 0.01 = \text{sq. ft. of child-care facility}
\]

In the event that the net addition of gross square feet of office or hotel space of all participating projects is less than 300,000 square feet, the child-care facility may have a...
minimum gross floor area of 2,000 square feet or the area determined according to the above formula, whichever is greater; and

(D) A written agreement binding each of the participating project sponsors, with a term of 20 years from the date of issuance of the first certificate of occupancy for any development project complying with this part, guaranteeing that a child-care facility will be leased or subleased to one or more nonprofit child-care providers for as long as there is a demonstrated demand under ((Part)) 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 ((an on-site or near-site)) a child-care facility. The fee shall be computed as follows:

\[
\text{Net add. gross sq. ft. office or hotel space} \times \$1.00 = \text{Total Fee}
\]

Upon payment of the fee in full to the Controller and upon request of the sponsor, the Controller shall issue a certification that the fee has been paid. The sponsor shall present such certification to the Director prior to the issuance by the ((Superintendent)) Director of the Department of Building Inspection of the first certificate of occupancy 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 ((Affordable)) 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 Paragraphs (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 Paragraph (b)(4) of this Section 314.4 and shall be determined by the Commission according to the following formula:

\[
\left( \frac{\text{Net. add. Gross sq. ft. space subject project}}{\text{Net. add. Gross sq. ft. space all participating projects}} \right) \times \text{Sq. ft. child care facility} \times 100 \times $1.00
\]

\= \text{Total Fee For Subject Project}

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 for the development project, provide proof to the 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:

\[
\text{Net add. gross sq. ft. office or hotel space} \times 0.01 = \text{sq. ft. of child-care facility}
\]

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

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

(F) The Department of Children, Youth and Their Families has determined that the proposed child-care facility will help meet the needs identified in the San Francisco Child Care Needs Assessment and will be consistent with the City Wide Child Care Plan; provided, however, that this Paragraph (F) shall not apply to any office or hotel development project approved by the Planning Commission prior to December 31, 1999.
Upon compliance with the requirements of this Part, the nonprofit organization shall enjoy all of the rights and be subject to all of the obligations of the sponsor, and the sponsor shall have no further rights or obligations under this Section.

(c) The ((Superintendent)) Director of the Department of Building Inspection shall provide notice in writing to the Director of Planning at least five business days prior to issuing the first certificate of occupancy for any development project subject to this Section. If the Director of Planning notifies the ((Superintendent)) Director of the Department of Building Inspection within such time that the sponsor has not complied with the provisions of this Section, the ((Superintendent)) Director of the Department of Building Inspection shall deny any and all certificates of occupancy. If the Director of Planning notifies the ((Superintendent)) Director of the Department of Building Inspection that the sponsor has complied with this Section or fails to respond within five business days, a certificate of occupancy shall not be disapproved pursuant to this Section. Any failure of the ((Superintendent)) Director of the Department of Building Inspection or the Director of Planning to give any notice under this Subsection shall not relieve a sponsor from compliance with this Section.

(d) In the event that the Department or the Commission takes action affecting any development project subject to this Section and such action is thereafter modified, superseded, vacated, or reversed by the Department or the Commission, Board of ((Permit)) Appeals, the Board of Supervisors, or by court action, the permit application for such office development project shall be remanded to the Commission for a hearing within 60 days of the date on which such action is final to determine whether the proposed project has been changed in a manner which affects the area of the child-care facility or the amount of the in-lieu fee to be provided under this Section 314.4 and, if so, the Commission shall revise the child-care requirement imposed on the permit application in compliance with this Section.
(e) The sponsor shall supply all information to the Department and the Commission necessary to make a determination as to the applicability of this Section and the number of gross square feet of office or hotel space subject to this Section.

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

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

(1) The address of the child-care facility;
(2) The name and address of the child-care provider operating the facility;
(3) The size of the center in terms of floor area;
(4) The capacity of the child-care facility in terms of the maximum number of children for which the facility is authorized to care under the license;
(5) The number and ages of children cared for at the facility during the previous year; and
(6) The fees charged parents for use of the facility during the previous year.

(h) In the event that a sponsor elects to satisfy its child-care requirement under Paragraphs 314.4(b)(1), (2), (3) or (5) by providing an on-site or near-site child-care facility, or under Paragraph 314.4(b)(6) by agreement with a non-profit organization, the sponsor, or in the case of a facility created pursuant to Paragraph 314.4(b)(6) the non-profit organization, may apply to the Director to eliminate the facility or to reduce the floor area of
the facility in any amount, providing, however, that the gross floor area of the reduced facility is at least 2,000 square feet. The Director shall schedule a public hearing on any such application before the Commission and provide notice pursuant to City Planning Code Section 306.3(a) at least two months prior to the hearing. The application may be granted only where the sponsor has demonstrated that there is insufficient demand for the amount of floor area then devoted to the on-site or near-site child-care facility. The actual reduction in floor area or elimination of the child-care facility shall not be permitted in any case until six months after the application is granted. Such application may be made only five years or more after the issuance of the first certificate of occupancy for the project.

Prior to the reduction in floor area or elimination of the child care facility, the sponsor shall pay an in-lieu fee to the City's Controller to be computed as follows:

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

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

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

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By:  

MIRIAM STOMBLER  
Deputy City Attorney
Ordinance amending Planning Code Sections 314.1 and 314.4 to allow a developer to satisfy the 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.

January 31, 2000  Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
   Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

January 31, 2000  Board of Supervisors — PASSED ON FIRST READING AS AMENDED
   Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

February 7, 2000  Board of Supervisors — FINALLY PASSED
   Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee
I hereby certify that the foregoing Ordinance was FINALLY PASSED on February 7, 2000 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Date Approved

FEB 18 2000

Mayor Willie L. Brown Jr.