

FILE NO. 991877

ORDINANCE NO. 22-00

1 [Child Care Facilities]
2 AMENDING PART II, CHAPTER II, OF THE SAN FRANCISCO MUNICIPAL CODE
3 (PLANNING CODE) BY AMENDING SECTIONS 314.1 AND 314.4 TO ALLOW A
4 DEVELOPER TO SATISFY THE CHILD-CARE REQUIREMENT BY ENTERING INTO AN
5 ARRANGEMENT PURSUANT TO WHICH A NONPROFIT ORGANIZATION WILL PROVIDE
6 A CHILD-CARE FACILITY AT A SITE WITHIN THE CITY.

7 Note: Additions are underlined; deletions are in ((double parentheses)).
8

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (k) "Licensed child-care facility" shall mean a child-care facility which has been
21 issued a valid license by the California Department of Social Services pursuant to California
22 Health and Safety Code Sections 1596.80 — 1596.875, 1596.95 — 1597.09, or 1597.30 —
23 1597.61.

24 (l) "Net addition of gross square feet of hotel space" shall mean gross floor area as
25 defined in Planning Code Section 102.9 to be occupied by, or primarily serving, hotel use, less

1 the gross floor area in any structure demolished or rehabilitated as part of the proposed hotel
2 development project space used primarily and continuously for office or hotel use and not
3 accessory to any use other than office or hotel use for five years prior to Planning
4 Commission approval of the hotel development project subject to this Section, or for the life of
5 the structure demolished or rehabilitated, whichever is shorter.

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

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

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

23 (((o))) (p) "Office development project" shall mean any new construction, addition,
24 extension, conversion or enlargement, or combination thereof, of an existing structure which
25 includes any gross square feet of office space.

1 (((p))) (q) “Office use” shall mean space within a structure or portion thereof
2 intended or primarily suitable for occupancy by persons or entities which perform, provide for
3 their own benefit, or provide to others at that location services including, but not limited to, the
4 following: Professional, banking, insurance, management, consulting, technical, sales and
5 design, or the office functions of manufacturing and warehousing businesses, but excluding
6 retail uses; repair; any business characterized by the physical transfer of tangible goods to
7 customers on the premises; wholesale shipping, receiving and storage; design showcases or
8 any other space intended and primarily suitable for display of goods; and child-care facilities.
9 This definition shall include all uses encompassed within the meaning of Planning Code
10 Section 219.

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

16 (((r))) (s) “Sponsor” shall mean an applicant seeking approval for construction of an
17 office or hotel development project subject to this Section and such applicant's successors
18 and assigns.

19 (((s)) “Superintendent” shall mean the Superintendent, Bureau, Department of
20 Building Inspection.))

21
22 Section 2. Article 3 of the San Francisco Planning Code is hereby amended by
23 amending Section 314.4, to read as follows:

24 **SEC. 314.4. IMPOSITION OF CHILD CARE REQUIREMENT.** (a) (1) The
25 Department or the Commission shall impose conditions on the approval of building or site

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

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

15 (3) Any person may appeal the initial determination by delivering an appeal in
16 writing to the Department within 15 days of such notice. If the initial determination is not
17 appealed within the time allotted, the initial determination shall become a final determination.
18 If the initial determination is appealed, the Commission shall schedule a public hearing prior to
19 the approval of the development project by the Commission or the Department to determine
20 the net addition of gross square feet of office or hotel space subject to this Section. The public
21 hearing may be scheduled separately or simultaneously with a hearing under City Planning
22 Code Sections 306.2, 309(h) or 313.4, or a Discretionary Review hearing under San
23 Francisco Municipal Code [Part III] Section 26. The Commission shall make a final
24 determination of the net addition of gross square feet at the hearing.

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1 (4) The final determination of the net addition of gross square feet of office or hotel
2 space subject to this Section shall be set forth in the conditions of approval relating to the
3 child-care requirement in any building or site permit application approved by the Department
4 or the Commission. The Director shall notify the ((Superintendent)) Director of the Department
5 of Building Inspection that the development project is subject to this Section at the time the
6 Department or the Commission approves the permit application.

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

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

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

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

19
20
$$\text{Net add. gross sq. ft. off. or hotel space} \times .01 = \text{sq. ft. of child-care facility}$$

21
22 In the event that the net addition of gross square feet of office or hotel of the development
23 project is less than 300,000 square feet, the child-care facility may have a minimum gross
24 floor area of 2,000 square feet or the area determined according to the above formula,
25 whichever is greater; and

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

4 (2) The sponsor of a development project subject to this Section in conjunction with
5 the sponsors of one or more other development projects subject to this Section located within
6 1/2 mile of one another may elect to provide a single child-care facility on the premises of one
7 of their development projects for the life of the project to meet the requirements of this
8 Section. The sponsors shall, prior to the issuance of the first certificate of occupancy by the
9 ((Superintendent)) Director of the Department of Building Inspection for any one of the
10 development projects complying with this part, provide proof to the Director of Planning that:

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

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

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

19
20
$$\text{Combined net add. gross sq. ft. office or hotel space of all participating dev. projects} \times$$

21
$$.01 = \text{sq. ft. of child-care facility}$$

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

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

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

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

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

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

22 Combined net add. gross sq. ft. office or hotel space of all participating dev. projects ×
23 .01 = sq. ft. of child-care facility

24 In the event that the net addition of gross square feet of office or hotel space of all
25 participating projects is less than 300,000 square feet, the child-care facility may have a

1 minimum gross floor area of 2,000 square feet or the area determined according to the above
2 formula, whichever is greater; and

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

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

$$12 \quad \text{Net add. gross sq. ft. office or hotel space} \times \$1.00 = \text{Total Fee}$$

13
14
15 Upon payment of the fee in full to the Controller and upon request of the sponsor, the
16 Controller shall issue a certification that the fee has been paid. The sponsor shall present
17 such certification to the Director prior to the issuance by the ((Superintendent)) Director of the
18 Department of Building Inspection of the first certificate of occupancy for the development
19 project.

20 (5) The sponsor of a development project subject to this Section may elect to satisfy
21 its child-care requirement by combining payment of an in-lieu fee to the ((Affordable)) Child
22 Care Capital Fund with construction of a child-care facility on the premises or providing child-
23 care facilities near the premises, either singly or in conjunction with other sponsors. The
24 child-care facility to be constructed on-site or provided near-site under this election shall be
25 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:

$$\left\{ \left[\begin{array}{c} \text{Net. add. Gross} \\ \text{sq. ft. space} \\ \text{subject project} \end{array} \right] - \left[\begin{array}{c} \text{Net. add. Gross} \\ \text{sq. ft. space} \\ \text{subject project} \\ \text{Net. add. Gross} \\ \text{sq. ft. space} \\ \text{all participating} \\ \text{projects} \end{array} \right] \left[\begin{array}{c} \text{Sq. ft.} \\ \text{child care} \\ \text{facility} \end{array} \right] \left[100 \right] \right\} \times \$1.00$$

= 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;

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

3 Net add. gross sq. ft. office or hotel space X .01 = sq. ft. of child-care
4 facility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (h) In the event that a sponsor elects to satisfy its child-care requirement under
22 ((Section)) Paragraphs 314.4(b)(1), (2), (3) or (5) by providing an on-site or near-site child-
23 care facility, or under Paragraph 314.4(b)(6) by agreement with a non-profit organization, the
24 sponsor, or in the case of a facility created pursuant to Paragraph 314.4(b)(6) the non-profit
25 organization, may apply to the Director to eliminate the facility or to reduce the floor area of

1 the facility in any amount, providing, however, that the gross floor area of ~~((the))~~ a reduced
 2 facility ~~((remaining))~~ is at least 2,000 square feet. The Director shall schedule a public hearing
 3 on any such application before the ~~((City Planning))~~ Commission and provide notice pursuant
 4 to City Planning Code Section 306.3(a) at least two months prior to the hearing. The
 5 application may be granted only where the sponsor has demonstrated that there is insufficient
 6 demand for the amount of floor area then devoted to the on-site or near-site child-care facility.
 7 The actual reduction in floor area or elimination of the child-care facility shall not be permitted
 8 in any case until six months after the application is granted. Such application may be made
 9 only five years or more after the issuance of the first certificate of occupancy for the project.
 10 Prior to the reduction in floor area or elimination of the child care facility, the sponsor shall pay
 11 an in-lieu fee to the City's Controller to be computed as follows:

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

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

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

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1 households at the same time and following the procedures for the adoption of rules and
2 regulations under Section 314.5.

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4 APPROVED AS TO FORM:
5 LOUISE H. RENNE, City Attorney

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8 By: 
9 MIRIAM STOMBLER
Deputy City Attorney

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 991877

Date Passed:

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

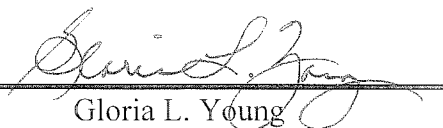
Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

File No. 991877

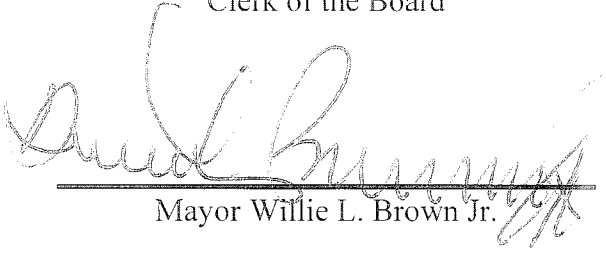
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on February 7, 2000
by the Board of Supervisors of the City and
County of San Francisco.

FEB 18 2000

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.