

1 [Planning Code - Small Family Child Care in an Affordable Dwelling Unit on the Ground Floor]

2

3 **Ordinance amending the Planning Code to permit an affordable dwelling unit with a**  
4 **State-licensed Small Family Child Care Home on the ground floor on certain**  
5 **commercial streets; excluding certain Child Care units from the calculation of**  
6 **maximum density permitted on the site; and making environmental findings, findings**  
7 **of consistency with the General Plan, and the eight priority policies of Planning Code,**  
8 **Section 101.1, and findings of public necessity, convenience, and welfare under**  
9 **Planning Code, Section 302.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

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

18

19 Section 1. Environmental and Land Use Findings.

20 (a) The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. 180917 and is incorporated herein by reference.

24 (b) On November 29, 2018, the Planning Commission, in Resolution No. 20345,  
25 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
2 the Board of Supervisors in File No. 180917, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
5 in Planning Commission Resolution No. 20345 and the Board incorporates such reasons  
6 herein by reference.

7 Section 2. Child Care Findings.

8 (a) San Francisco historically invests in the success of children, youth, and their  
9 families, most notably with the creation of the Children and Youth Fund in 2001 and its  
10 reauthorization in 2014, the passage of Public Enrichment and Education Fund in 2004, which  
11 included the Preschool for All program, and the Early Care and Education for All Initiative in  
12 2018.

13 (b) Despite San Francisco's valiant efforts to support families with young children,  
14 there remains a growing gap for those who are seeking access to high-quality early care and  
15 education. As of August 2018, there are 3,255 children under the age of 5 that remain on the  
16 waitlist for affordable child care.

17 (c) While the demand for child care grows, there is a nationwide crisis to sustain the  
18 early care and education workforce because of the rising cost of living. Early care and  
19 education educators earn much less than their counterparts in public school (TK-12). While  
20 more than half of early care educators have college degrees, they are among the lowest paid  
21 of any profession with degree attainment.

22 (d) Due to expensive commercial rents and onerous licensing requirements, it has  
23 been increasingly difficult for new child care centers to open. In many communities, Family  
24 Child Care Homes are the most affordable options available and are often the best choice for  
25 families that desire more schedule flexibility.

1           (e) Family Child Care Homes are licensed by the State of California and allow  
2 providers to operate in their own homes. Family Child Care providers play an essential role in  
3 the early care and education system as they are the largest providers for infant and toddler  
4 care and often reflect the diversity of the neighborhoods they serve, while providing the  
5 comfort of a home-based setting. Despite this great service and clear unmet need, Family  
6 Child Care capacity has only grown by 4% from 2006-2016.

7           (f) Many Family Child Care providers operate in rental homes or dwelling units in multi-  
8 family buildings. Due to the volatile housing market, providers are at risk of displacement.  
9 For Family Child Care providers, losing their home also means losing their source of income.

10           (g) According to the CPAC Children’s Needs Assessment Report, “San Francisco  
11 requires a system of strategies for both capital and operations, including funding for new  
12 buildings and renovations, support for new family child care homes, higher pay for teachers to  
13 reduce turnover, etc. Family child care homes are especially important for increasing infant  
14 and toddler capacity, as more families choose FCC homes for their youngest children.”

15           (h) The Budget & Legislative Analyst’s Report on Vacant and Abandoned buildings  
16 proposed a policy option for the Board of Supervisors to consider allowing more flexible use of  
17 commercial spaces, especially on the ground floor, including allowing housing in such space.

18  
19           Section 2-3. The Planning Code is hereby amended by revising Sections 102, 145.4,  
20 207, 401, 414A.3, and 414A.6, to read as follows:

21  
22       **SEC. 102. DEFINITIONS.**

23           \* \* \* \*

24       *Designated Child Care Unit.* A Dwelling Unit that is designated for use as a State-licensed Small  
25 *Family Child Care Home and meets the applicable standards established in Section 414A.6.*

\* \* \* \*

**SEC. 145.4. REQUIRED GROUND FLOOR COMMERCIAL USES.**

\* \* \* \*

**(c) Definitions.**

"Active commercial uses" shall include those uses specifically identified below in Table 145.4, and:

(1) Shall not include Automotive Uses Except for Automobile Sale or Rental uses where curb-cuts, garage doors, or loading access are not utilized or proposed, and such sales or rental activity is entirely within an enclosed building and does not encroach on surrounding sidewalks or open spaces;

(2) Shall include Public Facilities as defined in Section 102 and Public Uses as defined in Section 890.80, except for Utility Installations; ~~and~~

(3) Shall not include Residential Care Facilities as defined in Sections 102 and 890.50; and

(4) Shall include one or more Designated Child Care Units as defined in Section 102, provided that each such unit meets all applicable criteria set forth in Section 414A.6 of this Code.

**Table 145.4**

Reference for Commercial, Neighborhood Commercial, and Residential-Commercial Districts	Reference for Mixed Use Districts	Use
* * * *	* * * *	* * * *
<u>102</u>	<u>N/A</u>	<u>Designated Child Care Unit that meets the applicable criteria of Planning Code Section 414A.6</u>
* * * *	* * * *	* * * *

**SEC. 207. DWELLING UNIT DENSITY LIMITS.**

1 \* \* \* \*

2 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations  
3 under this Section 207 shall be made in the following circumstances:

4 \* \* \* \*

5 (4) **Accessory Dwelling Units in Multifamily Buildings; Accessory Dwelling**  
6 **Units in Single-Family Homes That Do Not Strictly Meet the Requirements in**  
7 **Subsection (c)(6).**

8 \* \* \* \*

9 (C) **Controls on Construction.** An Accessory Dwelling Unit is permitted  
10 to be constructed under the following conditions:

11 \* \* \* \*

12 (vi) An Accessory Dwelling Unit shall not be permitted in any  
13 building in a Neighborhood Commercial District or in the Chinatown Community Business or  
14 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial space,  
15 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section 102, and  
16 meets all applicable standards of Planning Code Section 414A.6(e).

17 \* \* \* \*

18 (7) A Designated Child Care Unit that meets all the applicable standards of Planning  
19 Code Section 414A.6 shall not count towards the calculation of maximum density permitted on the site.

20  
21 **SEC. 401. DEFINITIONS.**

22 In addition to the specific definitions set forth elsewhere in this Article, the following  
23 definitions shall govern interpretation of this Article:

24 \* \* \* \*

1 Designated Child Care Unit. As defined in Section 102. ~~A residential unit provided by a protect~~  
2 ~~subject to Section 414A.6 and that is designated for use as a Small Family Daycare Home.~~

3 \* \* \* \*

4  
5 **SEC. 414A.3. APPLICATION OF RESIDENTIAL CHILD CARE IMPACT FEE.**

6 (a) **Application.**

7 (1) Section 414A.1 et seq. shall apply to any residential development project  
8 that results in:

- 9 (A) At least one net new ~~residential~~ dwelling unit;
- 10 (B) Additional space in an existing ~~residential~~ dwelling unit of more than  
11 800 gross square feet;
- 12 (C) At least one net new group housing facility or residential care facility;
- 13 or
- 14 (D) Additional space in an existing group housing or residential care  
15 facility of more than 800 gross square feet.

16 (2) Section 414A.1 et seq. shall not apply to

- 17 (A) That portion of a residential development project consisting of a retail  
18 use;
- 19 (B) That portion of a residential development project located on property  
20 owned by the United States or any of its agencies;
- 21 (C) That portion of a residential development project located on property  
22 owned by the State of California or any of its agencies, with the exception of such property not  
23 used for a governmental purpose;
- 24 (D) That portion of a residential development project located on property  
25 under the jurisdiction of the Port of San Francisco or the San Francisco Office of Community

1 Investment and Infrastructure where the application of ~~this~~ Section ~~41.14A~~ 414A.1 et seq. is  
2 prohibited by State or local law; and

3 (E) Any residential development project that has obtained its First  
4 Construction Document prior to the effective date of Section 414A.1 et seq.

5  
6 **SEC. 414A.6. OPTION TO PROVIDE ~~ONSITE~~ SMALL FAMILY ~~DAY~~ CHILD CARE HOME**  
7 **IN LIEU OF FEE.**

8 (a) **Election to Provide Designated Child Care Units in Lieu of Residential Child**  
9 **Care Impact Fee.** Consistent with the timing to elect the option to provide On- or Off-site  
10 Units under Section 415.5(g), the sponsor of a development project subject to the  
11 requirements of Section 414A.1 et seq., may elect to fulfill all or a portion of the Residential  
12 Child Care Impact Fee requirement *imposed as a condition of approval* by creating one or more  
13 Designated Child Care Units in the project, as follows:

14 (1) The number of Designated Child Care Units in a project subject to this  
15 Section 414A shall be as follows:

16 **TABLE 414A.6A**

17 **NUMBER OF DESIGNATED CHILD CARE UNITS**

<b><u>Residential Project Size</u></b>	<b><i>Maximum allowable Designated Child Care Units</i></b>
<i>Residential Projects of 25-100 Dwelling #Units</i>	1 Unit
<i>Residential Projects of 101-200 Dwelling #Units</i>	2 Units
<i>Residential Projects of 201 or more Dwelling #Units</i>	3 Units

1 (2) A Designated Child Care Unit shall have two or more bedrooms and shall be  
2 1,000 square feet or more;

3 (3) A Designated Child Care Unit shall be offered only for rent and only to a  
4 tenant who agrees to operate a State-licensed Small Family ~~Daycare~~ Child Care Home in the  
5 Unit;

6 (4) A Designated Child Care Unit shall be reserved for a period of at least ~~ten~~ 45  
7 ten years from the date the Designated Unit is first leased to a tenant for use as a State-  
8 licensed Small Family ~~Daycare~~ Child Care Home; and

9 (5) A Designated Child Care Unit may not be an On-site or Off-site Unit, as  
10 defined in Planning Code Section s 415 et seq. establishing the Inclusionary Affordable  
11 Housing Program.

12 (b) **Calculation of Value of Designated Child Care Unit in Lieu of Residential**  
13 **Child Care Impact Fee.** For purposes of determining the value of a Designated Child Care  
14 Unit to calculate a waiver of the Child Care Fee, the City shall use the ~~calculate the number~~  
15 ~~Designated Child Care Units being provided multiplied by the average number of children per Unit~~  
16 ~~multiplied by the cost per child care space. The~~ following formula, ~~using numbers derived from the~~  
17 ~~2014 San Francisco Citywide Nexus Study shall be used:~~

18 Total number of gross square feet of the unit or units designated as Child Care  
19 Units \* Residential Child Care Impact Fee \* 20.

20 This value shall be deducted from the amount of the Residential Child Care  
21 Impact Fee owed.

22 (c) **Development of Procedures. Responsibilities of Operators of Small Family Daycare**  
23 **Child Care Homes in Designated Child Care Units.** Within nine months of the Effective Date of the  
24 ordinance in Board File No. 180917 amending this subsection (c), the ~~The~~ Office of Early Care and  
25 Education, in consultation with the Mayor's Office of Housing and Community Development, shall



1 will provide program regulations for Designated Child Care Units. The program regulations shall  
2 include the eligibility and occupancy requirements, the application process and assignment of the units,  
3 and the roles and responsibilities of the agencies in enforcing the program regulations.

4 (1) The Office of Early Care and Education shall:

5 (A) develop a set of written procedures, standards, and eligibility requirements  
6 for selecting State-licensed Small Family Child Care Home operators for these Designated Child Care  
7 Units;

8 (B) provide outreach and information to the early care and education  
9 community about the availability of Designated Child Care Units; and

10 (C) monitor Designated Child Care Units for program compliance listed in  
11 subsection (d) as Responsibilities of Operators of Small Family Child Care Homes and refer any  
12 instances of noncompliance as a child care provider to the Planning Department for  
13 enforcement.

14 (2) MOHCD shall:

15 (A) publish program regulations on its website and update from time to time;  
16 and

17 (B) screen applicants for income and household eligibility and perform annual  
18 income certification consistent with the Inclusionary Affordable Housing Monitoring and Procedures  
19 Guidelines as updated from time to time.

20 (d) Responsibilities of Operators of Small Family Child Care Homes in Designated Child  
21 Care Units. A tenant of any Designated Child Care Unit shall agree to operate a State-licensed  
22 Small Family ~~Daycare~~ Child Care Home in the unit for a minimum of ~~10~~ 15 ~~ten~~ years as follows:

23 (1) If, in the determination of the Office of Early Care and Education, the tenant  
24 does not begin to operate a State-licensed Small Family ~~Daycare~~ Child Care Home in the unit  
25 within nine months of occupying the unit, or if the tenant ceases to operate a State-licensed

1 Small Family ~~Daycare~~ Child Care Home at any point in time within ~~ten~~ 15-ten years from the  
2 date the Designated Child Care Unit is first leased to a tenant to operate a State-licensed Small  
3 Family ~~Daycare~~ Child Care Home, all tenants in the Unit shall be required to vacate the unit  
4 within 180 days, provided that if a Small Family Child Care Home has operated in the unit for 15 ten  
5 years or more, a tenant who operated a Small Family Child Care Home in the unit will not be required  
6 to vacate the unit after such 1510-year period;

7 (2) At least ~~1/3~~ one-third of the children served by the Small Family ~~Daycare~~  
8 Child Care Home shall be from Households of Low- or Moderate-income, as defined in Section  
9 401; and

10 (3) The Small Family ~~Daycare~~ Child Care Home established in any Designated  
11 Child Care Unit shall serve at least four children of whom the operator of the Small Family  
12 ~~Daycare~~ Child Care Home is not a parent or guardian, based on an average over the previous  
13 12 months.

14 **(e) Option to Provide Designated Child Care Units in the Ground Floor on Commercial**  
15 **Street Frontages. On street frontages where ground floor commercial uses are required pursuant to**  
16 **Section 145.4 of this Code, a Designated Child Care Unit may be considered an Active Commercial**  
17 **Use if the unit meets all of the following requirements:**

18 (1) The Dwelling Unit is a Rental Unit, as defined in Planning Code Section 401;

19 (2) The Designated Child Care Unit shall have two or more bedrooms and shall be  
20 1,000 square feet or more;

21 (3) If a Designated Child Care Unit is being added to an existing building in the ground  
22 floor commercial space, and it is not physically possible to provide two code-complying bedrooms,  
23 such Designated Child Care Unit shall have one bedroom and shall be 1,000 square feet or more;

24 (4) No more than one Designated Child Care Unit shall be permitted in each building;

1                   (5) The Dwelling Unit is eligible to be designated a below market rate unit affordable to  
2 moderate-income households, which shall have an affordable rent set at 80% of Area Median Income  
3 or less, with households earning from 65% to 90% of Area Median Income eligible to apply for such  
4 dwelling unit, but the Dwelling Unit may not be an On-site or Off-site Affordable Housing Unit, as  
5 required by Planning Code Sections 415 et seq. establishing the Inclusionary Affordable Housing  
6 Program;

7                   (6) A State-licensed Small Family Child Care Home is provided in such Dwelling Unit  
8 and complies with the applicable requirements set forth in Planning Code Section 414A.6(d) for a  
9 Designated Child Care Unit;

10                   (7) If a Designated Child Care Unit no longer provides a State-licensed Small Family  
11 Child Care Home in the unit, the owner of the project in which the unit is located shall provide notice  
12 to the Mayor's Office of Housing and Community Development (MOHCD) and the Office of Early Care  
13 and Education within 30 days. All tenants in the Unit shall be required to vacate the unit within 180  
14 days. The owner of the project in which the Designated Child Care Unit is located shall allow  
15 MOHCD, as assisted by the Office of Early Care and Education, to attempt to fill that unit with a  
16 Tenant eligible under the Inclusionary Affordable Housing Program who is also an eligible operator of  
17 a Small Family Child Care Home. If, in the determination of the Office of Early Care and Education,  
18 the tenant fraudulently did not intend to operate a State-licensed Small Family Child Care Home in the  
19 unit within nine months of occupying the unit, all tenants in such unit shall be required to vacate the  
20 unit within 60 days. MOHCD shall use its best efforts to fill such vacated unit with a Tenant registered  
21 with the Office of Early Care and Education and licensed to provide Small Family Child Care Home  
22 who also meets the Income restrictions for a Designated Unit; and

23                   (8) The Designated Child Care Unit shall provide a State-licensed Small Family Child  
24 Care Home in the Designated Child Care Unit for a minimum of 15 years. In the event one or more  
25 tenants has provided such child care in the Designated Child Care Unit for 15 years, the existing

1 tenant who has provided a State-licensed Small Family Child Care Home in the Designated Child Care  
2 Unit shall not thereafter be obligated to vacate the unit if such tenant ceases to provide a State-licensed  
3 Small Family Child Care Home in the Designated Child Care Unit, and shall be permitted to remain in  
4 the Unit until such tenant elects to vacate or fails to comply with the laws applicable to occupancy of  
5 the Unit. Upon such vacation, the Unit shall not be designated a below market rate unit, and the owner  
6 may rent the Unit at market rate.

7  
8 Section ~~3~~4. Effective Date. This ordinance shall become effective 30 days after  
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
11 of Supervisors overrides the Mayor’s veto of the ordinance.

12  
13 Section ~~4~~5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
17 additions, and Board amendment deletions in accordance with the “Note” that appears under  
18 the official title of the ordinance.

19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA  
21 City Attorney

22 By: \_\_\_\_\_  
23 KATE H. STACY  
24 Deputy City Attorney

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