Executive Summary
Child Care In Lieu Fee Amendment
HEARING DATE: OCTOBER 15, 2015

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Project Name:	**Child Care in Lieu Fee Increase and Application**
Case Number:	**2015-009771PCA** [Board File No. 150793]
Initiated by:	Supervisor Yee / Introduced July 29, 2015
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Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to increase the Child Care In Lieu Fee for office and hotel development projects of up to $1.57 per gross square foot and apply the Fee to projects of 25,000 or more gross square feet; to impose a tiered Child Care Fee for residential development projects of up to $1.83 per gross square feet; to allow developers the option to provide onsite Small Family Daycare Homes in lieu of the fee.

The Way It Is Now:

Currently the City charges child care fees for downtown commercial development and residential development in Plan Areas per the table below:

Child Care Fee	**Amount**
Residential Fees ($/Goss Square Feet (GSF))	
Balboa Park	$1.46
Eastern Neighborhoods*	$1.26
Market and Octavia	$0.87
Visitacion Valley	$1.11
Commercial Fees ($/Goss Square Feet (GSF))	
Citywide-Office/Hotel (50,000 GSF or more)	$1.21
Balboa Park	$0.27
Eastern Neighborhoods*	$0.34

*Note that the table highlights the maximum fee charged in each infrastructure category.

The child care fees associated with Area Plans must be spent within the Area Plans borders, while the Citywide Fee can be spent throughout the City. As with all impact fees, the funding must spent on capital costs associated with the anticipated growth in child care need.

In general, fees are applicable to development projects which result in:

1. At least one net residential unit
2. Additional space in an existing residential unit of more than 800 gross square feet,
3. At least one net new group housing facility or residential care facility,
4. Additional space in an existing group housing or residential care facility of more than 800 gross square feet,
5. New construction of a non-residential use, or
6. Additional non-residential space in excess of 800 gross square feet in an existing structure.

The Way It Would Be:

The new Residential Child Care Impact Fee would apply Citywide. The legislation would also change the child care requirement for office and hotel development projects (section 414.1) by applying to projects proposing the net addition of 25,000 or more gross square feet of office or hotel space. New commercial and residential fees would be charged based on the number of units provided per table below.

Child care Fee	**Amount**
Residential Fees ($/Goss Square Feet (GSF))	
Balboa Park*	$1.46
Eastern Neighborhoods	$1.26
Market and Octavia	$0.87
Visitacion Valley	$1.11
Citywide Projects of 10 or more units	$1.83
Citywide Projects of up to 9 units	$0.91
Commercial Fees ($/Goss Square Feet (GSF))	
Citywide-Office/Hotel (25,000 GSF or more)	$1.57
Balboa Park	$0.27
Eastern Neighborhoods*	$0.34

The Residential Child Care Impact Fee (Fee) would apply to development projects which result in:

1. At least one net residential unit
2. Additional space in an existing residential unit of more than 800 gross square feet,
3. At least one net new group housing facility or residential care facility,
4. Additional space in an existing group housing or residential care facility of more than 800 gross square feet.

Note that the fee rates in Area Plans would remain the same with the difference in the fee deposited into the newly created Child Care Facilities Fund. Exceptions to the new fee would not apply to retail portions of a residential project, government owned properties, and any project that has obtained its First Construction Document prior to the effective date of Section 414A.1. There are additional fees for the conversion of non-residential space to residential determined by the number of units as well from PDR to residential.

Projects may also choose to provide a small family daycare home known as a Designated Child Care Unit in lieu of a portion or 100 percent of the fee as follows:

Residential Project	Maximum Allowable Designated Child Care Units
25-100 units	1 unit
101-200 units	2 units
201 or more units	3 units

Designated Child Care Unit would only be offered for rents and to a tenant who agrees to operate a licensed small Family Daycare Home in the unit. The unit would have two or more bedrooms and would be reserved as a Daycare Home for at least ten years.

BACKGROUND

The Planning Code contains over 20 different development impact fees, including several single-purpose fees as well as several community infrastructure fees that the City established as a part of various area plan efforts. In 2013, the consultant company AECOM began to update the City's nexus analysis with direction from the San Francisco Planning Department, the San Francisco Capital Improvements Program with direction from the City Attorney's Office.

The nexus analysis studied the connection of new growth (nexus) to facilities for recreation and open space, child care, streetscape and pedestrian infrastructure, and bicycle infrastructure. The nexus study and accompanying Level of Service (LOS) report[1] developed a standards-based methodology for existing impact fees and served as the five year update to the nexus studies as outlined in Planning Code section 410.

ISSUES AND CONSIDERATIONS

Development Impact Fees

Cities are authorized to levy development impact fees through the California Mitigation Fee Act[2], (hereinafter the Fee Act) that establishes requirements and principles for local jurisdictions to impose fees as a condition of approval. One of the requirements set by the Fee Act requires local jurisdictions establish a "nexus" between the impacts of new development and the proposed fee. While not all fees in Article Four of the Planning Code are subject to the Fee Act, it is the City's practice to establish a nexus for any fee imposed as a condition of development.

The San Francisco Citywide Nexus Analysis established a residential fee for child care of $1.86/GSF for residential and $1.58/GSF for commercial using data from 2013. The current legislation proposes to charge 90% of the San Francisco Citywide Nexus Analysis-adjusted for 2015 rates for the commercial fee ($1.57/GSF) and 90% of the Nexus ($1.83/GSF) of the residential fee for projects with 10 or more units and 45% of Nexus ($0.91) of the fee for projects with 0-9 units. Note that funds generated from the impact fee may only be used to fund capital child care projects and facilities.

Currently, impact fees levied in the Area Plans are spent within the borders of each Plan. The Planning Department worked extensively with the Office of Early Care and Education to develop a Notice of

[1]Found at http://www.sf-planning.org/index.aspx?page=2893 and in BOS File No. 150149)

[2] California Government Code Section 66000 et. seq.

Funding Availability for Market Octavia for child care funds accrued and will do the same when enough funds have accrued in Eastern Neighborhoods.

Note that the Transportation Sustainability Fee (TSF) rate proposed by the Land Use Committee of the Board of Supervisors (BOS) for projects over 100 units and more than 100,000 GSF may make some projects infeasible with the proposed Residential Child Care Fee in this ordinance-please see table below. The TSF Feasibility study notes that at 150% of the Base Case TSF (rates that were proposed in 2012) the fee does not impact the overall feasibility for the majority of prototypes, but could impact the feasibility of some projects.[3]

Use	Current TIDF	Proposed TSF Rate	150% of Base TSF ($/GSF)	Proposed Child Care Fee	BOS TSF less than 100 units and less than 100k	BOS TSF less than 100 units and less than 100k + Proposed Child Care Fee	BOS TSF more than 100 units and more than 100k	BOS TSF more than 100 units and more than 100k+Proposed Child Care Fee
Residential	$0	$7.74	$9.29	$1.83	$7.74	$9.57	$8.74	$10.57
Nonresidential	$13.87 - $14.59	$18.04	$21.65	$1.57	$18.04	$19.61	$19.04	$20.61

Note that the TSF was supported by a feasibility study which was not completed for the proposed child care fee. The Department believes the proposed fee recommendation is justifiable, given that the TSF rate increases only for projects that are more than 100 units or more than 100 GSF.

Child Care Need

As of 2010, 79,210 children ages 0-12 call San Francisco home, with approximately 25,186 under the age of 12 in families with income levels eligible for a subsidy for early care, which represent 35% of the City's young child population.

The demand for child care is mostly generated by those who live in San Francisco. A smaller percentage is generated by those who work in the City but do not reside in San Francisco. Child care demand is calculated by the estimating the pool of children who would require licensed child care based on the labor force and an estimated percentage of parents who use formal licensed care.

The child care nexus was established on the Level of Service (LOS) metric, which is based on projected demographics of the City in 2020. The LOS is determined by the percent of infant and toddler (ages 0-2) child care demand served by available licensed slots. The same formula is used to determine the LOS for preschoolers. Childcare LOS is currently provided for 37% of demand for infants and toddler (ages 0-2)

[3] The Transportation Sustainability Fee: Economic Feasibility Study can be found at: http://www.sf-planning.org/ftp/files/plans-and-programs/emerging_issues/tsp/TSF_EconomicFeasibilityStudy_Spring2015.pdf

and child care LOS is currently provided for 99.6% of child care demand for preschoolers (ages 3-5). The nexus study analyzed the same LOS metrics-37% of demand for infants and toddlers and 99.6% for preschoolers-for the year 2020.

The 2012-2013 San Francisco Early Care and Education Needs Assessment[4] was overseen by the Child Care Planning and Advisory Council (CPAC), the Assessment provides an overview of the demographic needs for child care in the City as well as outlines capacity for early care and the unmet need for subsided care. The report also provides a detailed overview of the early care and education landscape in San Francisco. Of particular note in the report is the creation of the Office of Early Care and Education (OECE), which coordinates and consolidates services, improves policy coordination, and provides a single line of authority for the City's investments in early care and educations services. This office also sits on the interagency Plan Implementation Committee which programs the City's impact fees. This office would also oversee the new Child Care Capital Fund established in the proposed ordinance.

Child Care Facilities

Provision of child care can be divided into two categories, licensed and unlicensed. Unlicensed child care could be more formal child care administered through programs like the Boys and Girls Club or more informal care such as stay-at-home parents. Unlicensed child care is largely beyond the scope or control of the City.

Licensed child care takes two forms, child care centers that are often located in commercial buildings, and family child care homes (FCCH) that are typically located within private residences. FCCH have a lower capacity with a maximum of 12-14 children, and are principally permitted throughout the City, except in most PDR districts. Facilities with 15 or more children are considered child care centers and often require conditional use authorization as larger institutional uses.

Both FCCH and child care centers require licensing from the City and the City only provides capital costs to licensed facilities. Impact fees, including the one proposed in this ordinance, are used for child care centers that are serving infants, toddlers, and preschooler care. School-age care is generally provided for within the schools facilities' built by the School District; therefore the Citywide Nexus Study limited the LOS to children ages 0-5.

The current child care fees collected at occupancy from new office and hotel developments above 50,000 square feet of $1 per square foot were established in 1985. These development fees are spent on child care facility capital and infrastructure as part of the Child Care Facilities Fund, administered by the Low Income Investment Fund under contract with the Office of Early Care and Education. The fees are used to increase and/or retain child care capacity in San Francisco. Funding available to child care agencies for facility development include: pre-development grants, new capital grants, move-in grants, start-up capacity grants and emergency renovation and repair grants. Priority for funding is given to child care programs that are part of City funded development projects, especially as part of affordable housing such as HOPE SF, public/private partnerships, those serving a higher percentage of low/moderate income families, and those providing increased access to infants, toddlers and children with special needs.

The increased revenue generated by the Residential Child Care fees will supplement the current Child Care Facilities Fund and enable the City to support more of the child care facility projects currently in the pipeline, using the same application process and priorities for funding. Examples of projects in the

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[4] The 2012-2013 San Francisco Early Care and Education Needs Assessment can be found at http://38.106.4.155/modules/showdocument.aspx?documentid=1932

pipeline include Hunter's View Block 10, the Transbay Block 7, HOPE SF Alice Griffiths, 1500 Mission Street, Mission Neighborhood Centers, and Nihonmachi Little Friends. Estimated costs of confirmed and potential child care facility projects and grants requested show a projected need of approximately $12 million from 2015-17 and beyond.

On-Site Child Care Facilities and Designated Child Care Center

The legislation provides credit for on-site child care facilities if the project sponsor applies to the Planning Department to receive a credit for an on-site child care facility. To qualify for the credit, the facility shall be open and available to the general public on the same terms and conditions as to residents of the residential development project in which the facilities are located. The credit is subject to the review and approval of the Planning Commission, who may apply a credit of up to 100% of the required fee. Project Sponsors who proposed an on-site child care facility for credit shall enter into an In-Kind Agreement with the City. In-Kind Agreements are subject to a valuation at the discretion of the Director of Planning. Project Sponsors must provide two cost estimates from independent sources of the proposed improvement. The actual agreement includes a description of the type and timeline of the proposed improvement, the appropriate value, and the legal remedies in case of failure of the project sponsor to provide an in-kind improvement according to the specified timeline and terms in the agreement.

This legislation also created a Designated Child Care Unit (DCCU) which is an on- or off-site unit provided by the developer that is designated for use as a Small Family Daycare Home, where Small Family Day Care Home is defined by the California Health and Safety Code[5]. Projects that provide a DCCU are eligible for a partial or full fee waiver of the Residential Child Care Fee requirement if the per the table below:

Residential Project	**Maximum Allowable Designated Child Care Units**
25-100 units	1 unit
101-200 units	2 units
201 or more units	3 units

In order to qualify for a fee waiver, the DCCU must be a rental unit, have two or more bedrooms, must operate as a Family Child Care Home for at least ten years, and be created within nine months of the tenant occupying the unit. The Designated Child Care Unit would occupy one of the development's required inclusionary units and would be income restricted through section 415. In effect, this would create a new preference for inclusionary units for people who are licensed child care providers that also meet the income restrictions for the unit. The Designated Child Care Unit is also subject to the following:

- If the OECE determines that a tenant has not begun to operate a Small Family Day Care Home within nine months or that the Day Care Home ceases to operate at any point in time within ten years from the date of the DCCU, than all tenants would be required to vacate the unit within 180 days

[5] Note that A Designated Child Care Unit is defined as an on-or off-site unit provided by a project that is designated for use as a Small Family Day Care Home. A Small Family Daycare Home is defined by the California & Safety Code Section 1596.78(c) and is amended from time to time. To date, the definition of a Small Family Day Care Home is a home that provides family day care for eight or fewer children, including children under the age of ten years who reside at the home.

- At least 1/3 of the children served by the Small Family Day Care Home must be from households of low or moderate income
- The Small Family Day Care home established in a DCCU shall serve at least four children of whom the operator of the Day Care is not a parent or guardian, based on an average over the previous 12 months.

If a project elects to complete a DCCU the fee reduction is based on the total number of gross square feet of the unit or units designated as DCCUs multiplied by the Residential Child care Impact Fee multiplied by 20. This formula is derived from the 2014 San Francisco Citywide Nexus Study. An example of how the calculation and fee waiver is provided per the table below:

Total Residential GSF	50,000
Residential Child Care Fee (Fee)	$1.83
Child Care Fee	$91,500
Total Units	150
BMR Rental (55% AMI)Units	18
Designated Child Care Units (DCCUs)	2
GSF of DCCUs	2,000
Fee waiver (GSF of DCCUs * Fee *20)	$73,200
Total Residential Child Care Fee	$18,300

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend ***approval with modifications*** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Remove the Designated Child Care Unit (DCCU) from the Inclusionary Program and create a separate program for the DCCU.
2. Clarify Child Care Fees levied in Area Plans remain in Area Plans.
3. The Office of Early Child Care (OECE) should be the Enforcement Agency.

BASIS FOR RECOMMENDATION

The Department recommends that the Commission recommend approval with modifications of the proposed Ordinance and adopt the attached Draft Resolution to that effect. Providing the funding for adequate child care facilities is a documented need in the City. Furthermore, there is an unmet capital need of approximately $12 million in the current pipeline for child care facilities that could be met with the proposed fee.

Recommendation 1: Remove the Designated Child Care Unit (DCCU) from the Inclusionary Program and Create a Separate Program for the DCCU

The City applauds efforts to create more facilities for child care especially small family daycare homes; however the implementation of a Designated Child Care Unit (DCCU) presents several questions and concerns regarding implementation. Based on input from Mayor's Office of Housing and Community Development (MOHCD) the Department has concerns about tying the inclusionary program to the DCCU. MOHCD and the Planning Department support the creation of more child care facilities and believe establishing a program, independent of the inclusionary program, is more appropriate.

The creation of a DCCU results in a full or partial credit for the child care fee and counts towards the City's inclusionary requirement. A DCCU could setup a bad precedent in that a project sponsor would be "double dipping" in that a sponsor would receive credit for both affordable housing and child care.

This program would also create a new inclusionary unit preference for child care providers. The City is in the process of reevaluating its preference for inclusionary units, and while it may make sense to have a preference for child care providers this has not been part of the discussion until now, and the Department isn't entirely clear on how this will impact the inclusionary program.

The inclusionary program is also tied to individuals making 55% of the AMI ($56,050 for a family of four) and requiring that low income tenants also be able to start a family child care center in the home within the nine month period could become onerous. Additionally, if the family home day care is unable to run for 10 years or if the tenant is unable to start a family home day care within nine months of occupying the units, the City could be put in the situation of evicting a low income tenant.

For these reasons the Department recommends that the DCCU be a separate program from the inclusionary program that is not tied to an individual's income. This would encourage the provision of child care services by allowing for a fee reduction that benefits the project sponsor without further burdening the inclusionary occupant. In order to test that the program's feasibility the Department proposes a monitoring the program to ensure the creation of units and if after one year a DCCU has not been designated we would recommend increasing the fee waiver from the current legislative proposal. Alternatively, if the program is determined infeasible the Department recommends eliminating the DCCU requirement altogether.

Recommendation 2: Clarify Child Care Fees levied in Area Plans remain in Area Plans.

Currently it is unclear that the fees levied in Area Plans would be unchanged in the current legislation. The intent is to have the Area Plan fees remain the same and the different in the fee would be deposited into the Child Care Facilities Fund.

Recommendation 3: The Office of Early Child Care (OECE) should be the Enforcement Agency.

Currently the Planning Department is named as the enforcement agency to ensure that a designated child care unit is running a family child care home for at least 10 years. Given that the Planning Department does not regulate child care or is equipped to determine what constitutes a legal family day care in the home, enforcement of the unit should remain with the Office of Early Child Care (OECE).

ENVIRONMENTAL REVIEW

The proposed Ordinance would result in no physical impact on the environment. The proposed amendments are statutory exempt from environmental review under CEQA Guidelines Section 152723- Rates, Tolls, Fares, and Charges.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

RECOMMENDATION:	**Recommendation of Approval with Modification**

Attachments:
Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 150793