



# SAN FRANCISCO PLANNING DEPARTMENT

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February 17, 2017

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Tang  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**Re: Transmittal of Planning Department Case Number 2017-000410PCA:  
"Baby Diaper-Changing Accommodations"  
Board File No. 161353  
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Tang,

On February 16, 2017 the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, sponsored by Supervisor Tang, that would replace a provision of the Planning Code with a new provision of the Administrative Code requiring all City buildings that are accessible to the public to install and maintain at least one baby diaper-changing accommodation that is accessible to women and one that is accessible to men, or a single baby diaper-changing accommodation that is accessible to all genders; amending the Police Code to require businesses that make a baby diaper-changing accommodation available in a restroom accessible to women to also install and maintain a baby diaper-changing accommodation in a restroom accessible to men or accessible to all genders; and amending the Building Code to require that new public-serving establishments, and substantially renovated public-serving establishments, install baby diaper-changing accommodations. At the hearing the Planning Commission recommended **approval**.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr", with a long horizontal flourish extending to the right.

Aaron D. Starr  
Manager of Legislative Affairs

cc:

Anne Pearson, Deputy City Attorney  
Dyanna Quizon, Aide to Supervisor Tang  
Andrea Ausberry, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19855 HEARING DATE FEBRUARY 16, 2017

*Project Name:* Baby Diaper-Changing Accommodations  
*Case Number:* 2017-000410PCA [Board File No. 161353]  
*Initiated by:* Supervisor Tang / Introduced December 13, 2016  
*Staff Contact:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD REPLACE A PROVISION OF THE PLANNING CODE WITH A NEW PROVISION OF THE ADMINISTRATIVE CODE REQUIRING ALL CITY BUILDINGS THAT ARE ACCESSIBLE TO THE PUBLIC TO INSTALL AND MAINTAIN AT LEAST ONE BABY DIAPER-CHANGING (HEREINAFTER DIAPER-CHANGING) ACCOMMODATION THAT IS ACCESSIBLE TO WOMEN AND ONE THAT IS ACCESSIBLE TO MEN, OR A SINGLE DIAPER-CHANGING ACCOMMODATION THAT IS ACCESSIBLE TO ALL GENDERS; AMENDING THE POLICE CODE TO REQUIRE BUSINESSES THAT MAKE A DIAPER-CHANGING ACCOMMODATION AVAILABLE IN A RESTROOM ACCESSIBLE TO WOMEN TO ALSO INSTALL AND MAINTAIN A DIAPER-CHANGING ACCOMMODATION IN A RESTROOM ACCESSIBLE TO MEN OR ACCESSIBLE TO ALL GENDERS; AND AMENDING THE BUILDING CODE TO REQUIRE THAT NEW PUBLIC-SERVING ESTABLISHMENTS, AND SUBSTANTIALLY RENOVATED PUBLIC-SERVING ESTABLISHMENTS, INSTALL DIAPER-CHANGING ACCOMMODATIONS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on December 13, 2016 Supervisors Tang introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 161353, which would Ordinance replacing a provision of the Planning Code with a new provision of the Administrative Code requiring all City buildings that are accessible to the public to install and maintain at least one baby diaper-changing (hereinafter diaper-changing) accommodation that is accessible to women and one that is accessible to men, or a single diaper-changing accommodation that is accessible to all genders; amending the Police Code to require businesses that make a diaper-changing accommodation available in a restroom accessible to women to also install and maintain a diaper-changing accommodation in a restroom accessible to men or accessible to all genders; and amending the Building Code to require that new public-serving establishments, and substantially renovated public-serving establishments, install diaper-changing accommodations; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 16, 2017; and,

WHEREAS, the proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve** the proposed ordinance.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission fully supports the intent of this legislation, which is to provide all genders with equal access to diaper-changing facilities for the reasons stated in Section 4 of the Ordinance.
2. The Commission fully supports the removal of the controls from the Planning Code for three main reasons. First, the law as currently adopted requires us to consult with the DBI on accessibility issues. Since there are many intricacies to the ADA, especially when it comes to bathrooms and accessibility, we always have to consult with DBI on diaper-changing facilities. The process would be more efficient if DBI reviewed for diaper changing facilities directly. Second, one of the triggers for this requirement is based on the cost of a permit, which could be a simple tenant improvement permit that Planning doesn't typically review. The Commission does not believe that it makes sense from a process stand point to route these types of permits to Planning to comply with just this one requirement. Finally, diaper-changing facilities are usually added after Planning's review and during the addendum phases when the interior plans have been more developed. Since the Planning Department doesn't always see the plans at this stage, it requires special routing back to Planning just to review for this one requirement.
3. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## **COMMUNITY FACILITIES ELEMENT**

### **OBJECTIVE 3**

ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

**Policy 3.7**

Program the centers to fill gaps in needed services, and provide adequate facilities for ill-housed existing services.

*The proposed ordinance will ensure that public facilities provide diaper-changing facilities to all genders, gilling in a gap of needed services and facilities in the City.*

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

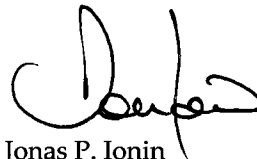
8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 16, 2017.



Jonas P. Ionin  
Commission Secretary

AYES: Fong, Hillis, Koppel, Richards, Melgar, and Moore

NOES: None

ABSENT: Johnson

ADOPTED: February 16, 2017



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning and Various Other Codes Text Amendment

HEARING DATE: FEBRUARY 16, 2017  
EXPIRATION DATE: MARCH 19, 2017

*Project Name:* Baby Diaper-Changing Accommodations  
*Case Number:* 2017-000410PCA [Board File No. 161353]  
*Initiated by:* Supervisor Tang / Introduced December 13, 2016  
*Staff Contact:* Aaron Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Recommendation:* **Recommend Approval**

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### PLANNING AND VARIOUS CODE AMENDMENTS

Ordinance replacing a provision of the **Planning Code** with a new provision of the **Administrative Code** requiring all City buildings that are accessible to the public to install and maintain at least one baby diaper-changing (hereinafter diaper-changing) accommodation that is accessible to women and one that is accessible to men, or a single diaper-changing accommodation that is accessible to all genders; amending the **Police Code** to require businesses that make a diaper-changing accommodation available in a restroom accessible to women to also install and maintain a diaper-changing accommodation in a restroom accessible to men or accessible to all genders; and amending the **Building Code** to require that new public-serving establishments, and substantially renovated public-serving establishments, install diaper-changing accommodations.

#### The Way It Is Now:

1. Planning Code Section 168 requires that each New Public-Serving Establishment<sup>1</sup> or Substantially Renovated Public-Serving Establishment<sup>2</sup> to install and maintain, at each floor level containing

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<sup>1</sup> A "Public Serving Establishment" is defined as: (a) a new Hospital, Health Services Use, or a Social Service or Philanthropic Facility as defined in Section [102](#) of the Planning Code, or a new hospital or medical center as defined in Sections [790.44](#) and [890.44](#) of the Planning Code, for which a building permit is issued on or at least six months after the effective date of this Section, unless the building will not be accessible to the public; (b) a new Retail Sales and Services use or Retail Entertainment and Recreation use as defined in Section [102](#) of the Planning Code that is 5,000 square feet or more in size for which a building permit is issued on or at least six months after the effective date of this Section, unless the building will not be accessible to the public and; (c) a new Amusement Game Arcade, Eating and Drinking use, Institution, Other Large, Institution, Other Small, Movie Theater, Sales and Service, Other Retail, or Sales and Service Retail use, as defined in [Articles 7](#) and [8](#) of the Planning Code, that is 5,000 square feet or more in size for which a building permit is issued on or at least six months after the effective date of this Section, unless the building will not be accessible to the public; and (d) a new library operated by the San Francisco Public Library, or a new, publicly accessible, facility operated by the Department of Recreation and Parks within the City for which final City approvals have been given on or at least six months after the effective date of this Section.

<sup>2</sup> "Substantially Renovated" is defined as any construction or renovation project that has an estimated cost of at least \$50,000.00 for which a building permit is issued or, in the case of City-owned structures, for which final City approval is given, to any of the uses listed in Subsection (a)(1) above, which were existing as of the effective date of this Section, or which were completed on or at least six months after the effective date of this Section.

restrooms accessible to the public, at least one diaper-changing accommodation that is accessible to women and one that is accessible to men, or a single diaper-changing accommodation that is accessible to both.

2. The Building Code is silent on diaper-changing facilities.
3. The Administrative Code is silent on diaper-changing facilities.
4. The Police Code is silent on diaper-changing facilities.

#### The Way It Would Be:

1. Section 168 would be delted from the **Planning Code**.
2. The **Building Code** would be amended to add Section 1210.4, which would require newly constructed or substantially renovated public service establishments (defined in Chapter 2, "Public Accommodation" of the Building Code) to install at least one diaper-changing accommodation in a restroom open and available to women, and one that is open and available to men, or in an all-gender restroom. This requirement would be waived where the installation of a diaper-changing facility would conflict with laws governing access to people with disabilities, or is otherwise infeasible due to spatial or structural limitations. The new section of the Building Code would also require public service establishments to provide signage indicating the location of baby diaper-changing stations. For purposes of the proposed Section 1210.4, a substantial renovation is defined as any addition, alteration or repair project performed under a building permit with a construction cost of \$50,000 or more.
3. The **Administrative Code** would be amended to add Section 4.1-4, which would require all buildings owned or rented by the City to install and maintain, at each floor level containing publicly accessible restrooms, at least one diaper-changing accommodation that is accessible to women and one that is accessible to men, or a single baby diaper changing station accessible to all genders. This requirement would be waived where the installation of a diaper-changing facility would conflict with laws governing access to people with disabilities, or is otherwise infeasible due to spatial or structural limitations. For existing buildings, the City would have six<sup>3</sup> months from the effective date of the ordinance to come into compliance.
4. The **Police Code** could be amended to add Section 3305.4, which would require public accommodations that make diaper-changing accommodations available in women's restrooms, to also install and maintain diaper-changing accommodations in men's restrooms or in restrooms that are accessible to all genders. This requirement would be waived where the installation of a diaper-changing facility would conflict with laws governing access to people with disabilities, or is otherwise infeasible due to spatial or structural limitations. Existing businesses would have six months from the effective date of the ordinance to come into compliance.

## BACKGROUND

On October 7, 2016, President Barack Obama signed into law the Bathrooms Accessible for Babies in Every Situation (BABIES) Act (H.R. 5147). The law requires federal buildings to provide diaper-changing facilities in both male and female restrooms. This ordinance is intended by the sponsors to build on the

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<sup>3</sup> Please note that Supervisor Tang's office informed the Planning Department that they intend to modify the ordinance so that the compliance period in all instances is 12 months, rather than six months. This report reflects how the current ordinance is drafted.



momentum that the federal government established, to assure adequate diaper-changing facilities in both our public and private buildings.

## **ISSUES AND CONSIDERATIONS**

### **Childcare and Diaper-Changing Stations**

Diaper-changing facilities are essential in childcare. According to a national study, 77 percent of parents with children five years of age and under have used diaper-changing facilities; among them, 34 percent have used diaper-changing stations six or more times per month. A growing number of fathers are choosing to stay home with their children, either on a long-term basis or for shorter periods of time; however, the current lack of facilities available to men requires fathers to change their babies' diapers on a variety of unsanitary surfaces in public and private buildings, such as sinks, restroom floors, and counters. Not only does this pose health and safety risks to the baby, it also poses health risks to all other bathroom patrons. Making diaper-changing facilities equally accessible to men will help to secure and protect the health and safety of infants, and our population as a whole, while also encouraging a family-friendly environment in both public and private facilities.

### **Changes to the Building Code**

The proposed changes to the Building Code would essentially place the existing controls in the Planning Code into the Building Code, but expand the control so that they apply to a much broader definition of Public Service Establishments. At the time this report was published, the Building Inspection Commission's (BIC) Code Advisory Committee (CAC) recommended unanimous approval to the BIC. The BIC is scheduled to review this ordinance and the CAC's recommendation the Wednesday before the Planning Commission hearing.

There are several reasons why it makes more sense to remove the diaper-changing requirements from the Planning Code and place it into the Building Code, including:

1. The Department of Building Inspection (DBI) is the agency that oversees the implementation of life and safety regulations (structural, electrical, plumbing, etc.) as well as ensuring compliance with the American's with Disabilities Act (ADA). To that end, DBI ensures that bathrooms are properly configured and meet disability access requirements. Under currently law, the Planning Department is required to implement the diaper-changing accommodation provision; however because we do not also review for ADA compliance we are required per the Planning Code, and common sense, to consult with the DBI on ADA access issues. The complexities of this law are such that Planning has to consult with DBI on almost every diaper-changing facility, putting Planning into a superfluous middle-man role.
2. One of the triggers for this requirement is based on the cost of construction, which could be a simple tenant improvement permit. While DBI reviews every building permit, the Planning Department doesn't typically review tenant improvement permits; therefore, a permit that otherwise would not have to come to Planning for review would have to be routed to us to ensure that the project complies with the diaper-changing accommodation requirement. This extra review needlessly slows down the permit review process not only for this project, but also for other projects that the Planning Department is reviewing.
3. For projects that Planning does review, such as new construction or changes in use, diaper-changing facilities are usually added after Planning's review and during the addendum phases

when the interior plans have been more developed. Since we don't always see the plans at this stage, it requires the permit to be routed back to Planning just to review for this one requirement, slowing down the review process for the project.

### **Changes to the Police Code**

The changes in the Police Code would require any new or existing Business Establishment<sup>4</sup> or Public Accommodation<sup>5</sup> that maintains a diaper-changing accommodation in a restroom accessible to women to also install and maintain diaper-changing accommodations in a restroom accessible to men or in a restroom accessible to all genders. Currently, the Planning Code only requires a much narrower set of buildings that are considered new construction or projects that have \$50,000 or more worth of work being done to have diaper-changing facilities available to men and women. While this requirement is located within the Police Code, it would be enforced by the Human Rights Commission. Businesses would have six months to comply, and this requirement would be waived if there are accessibility issues. Further, the ordinance states that this provision is not intended to interfere with any contractual obligations between the owner of a building in which a Business Establishment or Place of Public Accommodation is located, and any lessee of space within the building.

### **Changes to the Administrative Code**

Currently, the only City owned buildings that this requirement applies to are publically owned hospitals, libraries, or publically accessible facilities owned by the Recreation and Parks Department. The proposed changes to the Administration Code would make these requirements apply to all buildings on land owned by the City and County of San Francisco, and all buildings that are leased to or by the City whether such buildings are new or existing. For existing buildings, the City department or agency with jurisdiction over the building has six months from the effective date to comply with the requirements, and this requirement would be waived if there were any ADA accessibility issues.

## **RECOMMENDATION**

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

The Department fully supports the intent of this legislation, which is to provide all genders with equal access to diaper-changing facilities for the reasons specified in this report. The Department also fully supports the removal of the controls from the Planning Code for three main reasons. First, the law as

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<sup>4</sup> Business Establishment is defined as "any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist of requirements under which a substantial portion of the residents of this City could qualify."

<sup>5</sup> Public Accommodation is defined under the ADA as "Businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices."

currently adopted requires us to consult with the DBI on accessibility issues. Since there are many intricacies to the ADA, especially when it comes to bathrooms and accessibility, we always have to consult with DBI on diaper-changing facilities. The process would be more efficient if DBI reviewed for diaper changing facilities directly. Second, one of the triggers for this requirement is based on the cost of a permit, which could be a simple tenant improvement permit that Planning doesn't typically review. The Department does not believe that it makes sense from a process stand point to route these types of permits to Planning to comply with just this one requirement. Finally, diaper-changing facilities are usually added after Planning's review and during the addendum phases when the interior plans have been more developed. Since the Planning Department doesn't always see the plans at this stage, it requires special routing back to Planning just to review for this one requirement.

### **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.

### **IMPLEMENTATION**

The Department determined that this ordinance will improve our current implementation procedures by removing a requirement from the Planning Code that is more suited to DBI's responsibilities and review.

### **ENVIRONMENTAL REVIEW**

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

### **PUBLIC COMMENT**

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

The Small Business Commission and the Building Inspection Commission's Code Advisory Committee have both unanimously recommended approval of the proposed ordinance. The Building Inspection Commission will review this ordinance on February 15, 2017.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval</b>
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#### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit C: Board of Supervisors File No. 161353