

1 [Various Codes - Baby Diaper-Changing Accommodations]

2

3 **Ordinance replacing a provision of the Planning Code with a new provision of the**

4 **Administrative Code requiring all City buildings that are ~~accessible to~~ available for use by**

5 **the public to install and maintain at least one baby diaper-changing accommodation**

6 **that is ~~accessible to~~ available for use by women and one that is ~~accessible to~~ available for**

7 **use by men, or a single diaper-changing accommodation that is ~~accessible to~~ available for**

8 **use by all genders; amending the Police Code to require businesses that make a baby**

9 **diaper-changing accommodation available in a restroom ~~accessible to~~ available for use by**

10 **women to also install and maintain a baby diaper-changing accommodation in a**

11 **restroom ~~accessible to~~ available for use by men or ~~accessible to~~ available for use by all**

12 **genders; and amending the Building Code to require that new public-serving**

13 **establishments, and ~~substantially renovated~~ public-serving establishments with**

14 **substantially renovated toilet rooms, install baby diaper-changing accommodations;**

15 **making findings, including environmental findings, findings of public necessity,**

16 **convenience, and welfare under Planning Code, Section 302, and findings under the**

17 **California Health and Safety Code regarding building standards; and directing the Clerk**

18 **to forward this Ordinance to the California Building Standards Commission upon final**

19 **passage.**

20 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

21 **Additions to Codes** are in *single-underline italics Times New Roman font*.

22 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

23 **Board amendment additions** are in double-underlined Arial font.

24 **Board amendment deletions** are in ~~strikethrough Arial font~~.

25 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 1. Environmental and Planning Code Section 302 Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 161353 and is incorporated herein by reference. The Board affirms this determination.

(b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this Planning Code amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 19855, and the Board incorporates such reasons herein by reference.

Section 2. Pursuant to Charter Section D3.750-5, the Building Inspection Commission considered the Building Code amendment contained in Section 8 of this ordinance at a duly noticed public hearing held on February 15, 2017.

Section 3. Findings under the California Health and Safety Code.

The Board of Supervisors hereby finds that this ordinance does not modify a State “building standard,” as that term is defined in Section 18909 of the California Health and Safety Code. Therefore, the finding of local climactic, geological, or topographical conditions required by Sections 18941.5 and 17958.7 is not required.

Section 4. Name, Background, and Findings.

(a) This ordinance shall be known as the San Francisco Bathrooms Accessible for Babies in Every Situation (BABIES) Ordinance.

1 (b) San Francisco prides itself on being a family-friendly city and a leader on issues of
2 gender equality. This ordinance continues in that tradition.

3 (c) On October 7, 2016, President Barack Obama signed into law the Bathrooms
4 Accessible for Babies in Every Situation (BABIES) Act (H.R. 5147). The law requires federal
5 buildings to provide diaper-changing facilities in both male and female restrooms. San
6 Francisco must build on the momentum that the federal government has established, to
7 assure adequate diaper-changing facilities in both our public and private buildings.

8 (d) Diaper-changing facilities are essential in childcare. According to a national study,
9 77% of parents with children under 6 years of age have used diaper-changing facilities;
10 among them, 34% have used diaper-changing stations six or more times per month.

11 (e) Making diaper-changing facilities accessible to men is an essential step in the
12 journey toward gender equality in child care. Currently, fathers must change their babies'
13 diapers on a variety of unsanitary surfaces in public and private buildings, such as sinks,
14 restroom floors, and counters. Not only does this pose health and safety risks to the baby, it
15 also poses health risks to all other bathroom patrons. Making diaper-changing facilities
16 equally accessible to men will help to secure and protect the health and safety of infants, and
17 our population as a whole, while also encouraging a family-friendly environment in both public
18 and private facilities.

19 (f) A growing number of fathers are choosing to stay home with their children, either on
20 a long-term basis or for shorter periods of time. In addition to enhancing public health and
21 safety, this ordinance, by making diaper-changing facilities equally accessible to men, will
22 assist in breaking down stereotypes about gender roles regarding responsibility for childcare,
23 and will support Gay, Bisexual and Transgender families.

24
25 Section 5. The Planning Code is hereby amended by deleting Section 168, as follows:

1 **~~SEC. 168. BABY DIAPER-CHANGING ACCOMMODATIONS REQUIRED.~~**

2 ~~(a) Definitions.~~

3 ~~— (1) "Public-Serving Establishment." A Public-Serving Establishment shall be defined as:~~

4 ~~— (A) a new Hospital, Health Services Use, or a Social Service or Philanthropic Facility as~~
5 ~~defined in Section 102 of the Planning Code, or a new hospital or medical center as defined in Sections~~
6 ~~790.44 and 890.44 of the Planning Code, for which a building permit is issued on or at least six months~~
7 ~~after the effective date of this Section, unless the building will not be accessible to the public;~~

8 ~~— (B) a new Retail Sales and Services use or Retail Entertainment and Recreation use as~~
9 ~~defined in Section 102 of the Planning Code that is 5,000 square feet or more in size for which a~~
10 ~~building permit is issued on or at least six months after the effective date of this Section, unless the~~
11 ~~building will not be accessible to the public and;~~

12 ~~— (C) a new Amusement Game Arcade, Eating and Drinking use, Institution, Other Large,~~
13 ~~Institution, Other Small, Movie Theater, Sales and Service, Other Retail, or Sales and Service Retail~~
14 ~~use, as defined in Articles 7 and 8 of the Planning Code, that is 5,000 square feet or more in size for~~
15 ~~which a building permit is issued on or at least six months after the effective date of this Section, unless~~
16 ~~the building will not be accessible to the public; and~~

17 ~~— (D) a new library operated by the San Francisco Public Library, or a new, publicly~~
18 ~~accessible, facility operated by the Department of Recreation and Parks within the City for which final~~
19 ~~City approvals have been given on or at least six months after the effective date of this Section.~~

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

1 —(3) ~~"Baby Diaper Changing Accommodation." A safe, sanitary and convenient baby~~
2 ~~diaper changing station, deck table or similar amenity that is installed or placed in a separate,~~
3 ~~designated location in a Public-Serving Establishment subject to the provisions of this Section. Such~~
4 ~~accommodations may include, but are not limited to, stations, decks and tables in women's and men's~~
5 ~~restrooms or unisex/family restrooms.~~

6 —(b) ~~Baby Diaper Changing Accommodations Required. Every Public-Serving Establishment~~
7 ~~or Substantially Renovated Public-Serving Establishment, as defined in this Section, shall be required~~
8 ~~to provide and maintain Baby Diaper Changing Accommodations in accordance with the requirements~~
9 ~~of this Section.~~

10 —(c) ~~Installation of Baby Diaper Changing Accommodations. Each New Public-Serving~~
11 ~~Establishment or Substantially Renovated Public-Serving Establishment shall be required to install and~~
12 ~~maintain, at each floor level containing restrooms accessible to the public, at least one Baby Diaper-~~
13 ~~Changing Accommodation that is accessible to women and one that is accessible to men, or a single~~
14 ~~Diaper Changing Accommodation that is accessible to both. Each Establishment shall provide signage~~
15 ~~at or near its entrance indicating the location of the Baby Diaper Changing Accommodations. Any New~~
16 ~~Public-Serving Establishment or Substantially Renovated Public-Serving Establishment encompassing~~
17 ~~multiple establishments and having a central directory shall indicate on the directory the location of all~~
18 ~~such accommodations.~~

19 —(d) ~~Laws Relating to Access For the Disabled. The installation of all Baby Diaper Changing~~
20 ~~Accommodations shall comply with local, State, or Federal laws relating to access to the disabled. In~~
21 ~~the event that it is determined by Zoning Administrator, in consultation with the Director of the~~
22 ~~Department of Building Inspection or his or her designee, that a Substantially Renovated Public-~~
23 ~~Serving Establishment cannot install the Baby Diaper Changing Accommodations required by this~~
24 ~~Section and comply with local, State, or Federal laws relating to access to the disabled, the Zoning~~
25

1 ~~Administrator may waive the requirements of this Section for that Substantially Renovated Public-~~
2 ~~Serving Establishment.~~

3
4 Section 6. The Administrative Code is hereby amended by adding Section 4.1-4, to
5 read as follows:

6 **SEC. 4.1-4. BABY DIAPER-CHANGING ACCOMMODATIONS IN BUILDINGS ON**
7 **CITY-OWNED OR LEASED CITY-OCCUPIED LAND.**

8 (a) This Section 4.1-4 shall apply to all buildings on land owned by the City and County of San
9 Francisco ("City") and all buildings that are leased to or by the City, and available for use by the
10 public (collectively, "public buildings"), whether such buildings are new or existing. For existing
11 public buildings, the City department or agency with jurisdiction over the building shall have ~~six~~12
12 months from the effective date of this Section 4.1-4 to comply with the requirements; provided
13 nothing in this Section 4.1-4 shall be interpreted or applied so as to violate or impair an
14 existing contract or lease.

15 (b) ~~Unless not allowed by an existing lease, each public building shall be required~~
16 to Each City department or agency with jurisdiction over a public building shall *install and*
17 *maintain, at each floor level in the public building that includes containing restrooms accessible*
18 *to available for use by the public, at least one Baby Diaper-Changing Accommodation that is*
19 *accessible to available for use by women and one that is accessible to available for use by men, or*
20 *a single Diaper-Changing Accommodation that is accessible to available for use by all genders. For*
21 *purposes of this Section 4.1-4, a Baby Diaper-Changing Accommodation means a safe, sanitary, and*
22 *convenient baby diaper-changing station, ~~deck table, or similar amenity.~~ Such accommodations may*
23 *include, but are not limited to, work surfaces, stations, decks, and tables in women's and men's*
24 *restrooms or all-gender restrooms. Each public building shall provide signage at or near its entrance*
25 *indicating the location of the Baby Diaper-Changing Accommodations.*

1 (c) The installation of all Baby Diaper-Changing Accommodations shall comply with local City,
2 State, and Federal laws relating to access to persons with disabilities. ~~If the Director of the~~
3 ~~Department of Building Inspection or his or her designee determines that a public building~~
4 ~~subject to this Section 4.1-4 cannot install the Baby Diaper-Changing Accommodations~~
5 ~~required by this Section and comply with local, State, or Federal laws relating to access to~~
6 ~~persons with disabilities, including Section 11B-226.4 of the California Building Code, or that~~
7 ~~installation of the Baby Diaper-Changing Accommodation is otherwise infeasible due to spatial~~
8 ~~or structural limitations, the Director of the Department of Building Inspection, or his or her~~
9 ~~designee, may waive the requirements of this Section for that public building.~~

10 (d) Waivers.

11 (1) For public buildings that are leased to and occupied by the City, the
12 requirements of this Section 4.1-4 may be waived if the Director of the Department of Building
13 Inspection or his or her designee, in consultation with the Mayor's Office on Disability,
14 determines that the building cannot install the Baby Diaper-Changing Accommodations
15 required by this Section and comply with City, State, or Federal laws relating to access to
16 persons with disabilities, including Section 11B-226.4 of the California Building Code, or that
17 installation of the Baby Diaper-Changing Accommodation is otherwise infeasible due to spatial
18 or structural limitations.

19 (2) For public buildings that are under the jurisdiction and control of a City
20 department, the requirements of this Section 4.1-4 may be waived if the department head, in
21 consultation with the Director of the Department of Building Inspection and the Mayor's Office
22 on Disability, determines that the public building cannot install the Baby Diaper-Changing
23 Accommodations required by this Section and comply with City, State, or Federal laws
24 relating to access to persons with disabilities, including Section 11B-226.4 of the California
25

1 Building Code, or that installation of the Baby Diaper-Changing Accommodation is otherwise
2 infeasible due to spatial or structural limitations.

3 (3) For all other public buildings, the requirements of this Section 4.1-4 may be
4 waived if the Director of Administrative Services, in consultation with the Director of the
5 Department of Building Inspection and the Mayor’s Office on Disability, determines that the
6 public building cannot install the Baby Diaper-Changing Accommodations required by this
7 Section and comply with City, State, or Federal laws relating to access to persons with
8 disabilities, including Section 11B-226.4 of the California Building Code, or that installation of
9 the Baby Diaper-Changing Accommodation is otherwise infeasible due to spatial or structural
10 limitations.

11
12 Section 7. The Police Code is hereby amended by adding Section 3305.4 and revising
13 Section 3307, to read as follows:

14 **SEC. 3305.4. BABY DIAPER-CHANGING ACCOMMODATIONS.**

15 *(a) Definitions. For purposes of this Section 3305.4, the following definitions shall apply:*

16 *(1) “Business establishment” shall have the same meaning as in Section 3813(b) of this*
17 *Code.*

18 *(2) “Public accommodation” shall have the same meaning as in Title III of the*
19 *Americans with Disabilities Act of 1990, 42 U.S.C. Section 12181(7), and the federal regulations*
20 *adopted thereunder, as either are amended from time to time.*

21 *(3) “Baby Diaper-Changing Accommodation” shall mean a safe, sanitary, and*
22 *convenient baby diaper-changing station, ~~deck table, or similar amenity~~ that is installed or placed*
23 *in a separate, designated location in a Business Establishment or Public Accommodation*
24 *subject to the provisions of this Section. Such accommodations may include, but are not limited to,*
25 *work surfaces, stations, decks, and tables in women’s and men’s restrooms or all-gender restrooms.*

1 **(b) Requirement.** *All Business Establishments and Public Accommodations that maintain a*
2 *Baby Diaper-Changing Accommodation in a restroom ~~accessible to~~available for use by women*
3 *shall also install and maintain a Baby Diaper-Changing Accommodations in a restroom accessible*
4 *~~to~~available for use by men or in a restroom accessible ~~to~~available for use by all genders. The*
5 *installation of a Baby Diaper-Changing Accommodation shall comply with City, State, and*
6 *Federal laws relating to access to persons with disabilities.*

7 **(c)** *The Director of the Department of Building Inspection, or his or her designee, shall waive*
8 *compliance with ~~this~~ subsection (b) upon determining that a Business Establishment or Public*
9 *Accommodation subject to this Section 3305.4 cannot install the Baby Diaper-Changing*
10 *Accommodations required by this Section and comply with ~~local~~City, State, or Federal laws relating to*
11 *access to persons with disabilities, including Section 11B-226.4 of the California Building Code, or*
12 *that installation of the Baby Diaper-Changing Accommodation is otherwise infeasible due to spatial or*
13 *structural limitations.*

14 **(e)(d) Time for Compliance.**

15 **(1) Existing Businesses and Public Accommodations.** *Business Establishments and Public*
16 *Accommodations that are subject to this Section 3305.4 and in existence as of the effective date of this*
17 *Section shall have ~~six~~12 months from the effective date of this Section to come into compliance by*
18 *installing and maintaining a Baby Diaper-Changing Accommodation in a restroom accessible*
19 *~~to~~available for use by men or accessible ~~to~~available for use by all genders, if one is not already*
20 *installed and maintained.*

21 **(2) New Businesses and Public Accommodations.** *New Business Establishments and*
22 *Public Accommodations that choose to install and maintain a Baby Diaper-Changing Accommodation*
23 *in a restroom accessible ~~to~~available for use by women shall also install and maintain a Baby*
24 *Diaper-Changing Accommodation in a restroom accessible ~~to~~available for use by men or*
25 *accessible ~~to~~available for use by all genders immediately upon opening to the public.*

1 (de) Contractual obligations. Nothing in this Section 3305.4 is intended to interfere with any
2 contractual obligations between the owner of a building in which a Business Establishment or Place of
3 Public Accommodation is located, and any lessee of space within the building.

4
5 **SEC. 3307. ENFORCEMENT.**

6 (a) Human Rights Commission. Any person who believes that he or she has been
7 discriminated against in violation of Sections 3303, 3305, 3305.2, ~~or 3305.3,~~ or 3305.4 of this
8 Article 33 may file a complaint with the Human Rights Commission, which shall serve as a
9 request to have the Commission investigate and mediate the complaint pursuant to Section
10 12A.5 of the Administrative Code.

11 * * * *

12 (f) Responsibilities of the Department of Building Inspection. Upon complaint from a
13 member of the public or employee of a business establishment or place of public
14 accommodation, or receipt of a request from the Human Rights Commission, the Department
15 of Building Inspection shall inspect the business establishment or place of public
16 accommodation, if subject to Section 3305.3 or 3305.4, and determine if the business
17 establishment or place of public accommodation is in compliance with the requirements. In
18 addition, during the course of any regularly-scheduled interior inspection of a business
19 establishment or place of public accommodation subject to Section 3305.3 or 3305.4, the
20 Department shall verify compliance with the requirements. Any business establishment or
21 place of public accommodation found not to be in compliance with the requirements shall be
22 deemed to be in violation of the Building Code and the Building Official is authorized to abate
23 the violation in accordance with Section 102A of the Building Code.

1 Section 8. The Building Code is hereby amended by adding new Section 1210.4, to
2 read as follows:

3 **1210.4. Baby diaper-changing accommodations.** At least one Baby Diaper-Changing
4 Accommodation that is open and available for use by women and one that is open and available for use
5 by men, or a single Baby Diaper-Changing Accommodation that is open and available for use by
6 both genders, shall be installed and maintained in a newly constructed or substantially renovated
7 Public Service Establishment at each floor level containing a toilet room accessible to available for
8 use by the public.

9 **Exceptions:**

10 1. A Baby Diaper-Changing Accommodation shall not be required if the Building Official, or
11 his or her designee, determines that it cannot be installed and comply with local City, State, or Federal
12 laws relating to access to persons with disabilities, including Section 11B-226.4 of this Code.

13 2. A Baby Diaper-Changing Accommodation shall not be required if the Building Official, or
14 his or her designee, determines that the installation is infeasible due to spatial or structural limitations.

15 **1210.4.1 Definitions.** For purposes of this Section 1210.4, the following definitions shall apply.

16 “Baby Diaper-Changing Accommodation” shall mean a safe, sanitary, and convenient
17 baby diaper-changing station, ~~deck table, or similar amenity that is installed or placed in a~~
18 separate, designated location in a toilet room accessible to the public. Such accommodations may
19 include, but are not limited to, work surfaces, stations, decks, and tables in women's and men's toilet
20 rooms or all-gender toilet rooms.

21 “Public Service Establishment” shall mean a facility as specified in Subsections (2), (3),
22 (4), (5), ~~(6), (7), (8), (9), (10), (11), and (12), and (13)~~ of the definition of Place of Public
23 Accommodation in Chapter 2 of this Code, but shall not include any such facility where entry by
24 minors is prohibited by law.

1 “Substantially Renovated” shall be limited to renovation of a toilet room, and shall
2 mean any addition, alteration, or repair project to toilet rooms, performed under a building permit
3 with a cost of construction of \$50,000 or more for renovation of one or more toilet rooms.

4 **1210.4.2. Signage.** Each Public Service Establishment subject to Section 1210.4 shall
5 provide signage at or near its entrance stating "Baby Diaper-Changing Accommodation Inside." This
6 signage shall be posted in compliance with Section 11B-216.2 of this Code. In a building
7 encompassing multiple establishments and having a central directory, the location of all such
8 accommodations shall be indicated on the directory.

9 **1210.4.3.** Nothing in this Section 1210.4 shall be construed as requiring or
10 authorizing (1) a reduction in the number of toilet facilities that are required by Title 24 of the
11 California Code of Regulations or (2) a reduction in the number of toilet facilities accessible to
12 persons with disabilities that are otherwise required under either Title 24 of the California
13 Code of Regulations or the Federal Americans with Disabilities Act.

14
15 Section 9. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor’s veto of the ordinance.

19
20 Section 10. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24 additions, and Board amendment deletions in accordance with the “Note” that appears under
25 the official title of the ordinance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 11. Undertaking for the General Welfare. In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 12. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 13. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed to forward a copy of this ordinance to the California Building Standards Commission upon final passage.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Anne Pearson
Deputy City Attorney

n:\legana\as2016\1700221\01172492.docx