

BOARD of SUPERVISORS



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December 7, 2018

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On December 4, 2018, Supervisor Yee introduced the following substitute legislation:

**File No. 180917-2**

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

The proposed substitute ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

c: John Rahaim, Director  
Scott Sanchez, Zoning Administrator  
Lisa Gibson, Environmental Review Officer  
Devyani Jain, Deputy Environmental Review Officer  
AnMarie Rodgers, Director of Citywide Planning  
Dan Sider, Director of Executive Programs  
Aaron Starr, Manager of Legislative Affairs  
Joy Navarrete, Environmental Planning  
Laura Lynch, Environmental Planning

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, making**  
7 **findings of consistency with the General Plan, and the eight priority policies of**  
8 **Planning Code, Section 101.1, and findings of public necessity, convenience, and**  
9 **welfare under 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 Section 1. Environmental and Land Use Findings.

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

23 (b) On November 29, 2018, the Planning Commission, in Resolution No. 20345,  
24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
25 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  
8 Section 2. The Planning Code is hereby amended by revising Sections 102, 145.4,  
9 207, 401, 414A.3, and 414A.6, to read as follows:

10  
11 **SEC. 102. DEFINITIONS.**

12 \* \* \* \*

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

15 \* \* \* \*

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

17 \* \* \* \*

18 (c) **Definitions.**

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

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

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

3 (3) Shall not include Residential Care Facilities as defined in Sections 102 and  
 4 890.50; and

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

7 **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>
* * * *	* * * *	* * * *

15  
 16  
 17 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

18 \* \* \* \*

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

21 \* \* \* \*

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

25 \* \* \* \*

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

3 \* \* \* \*

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

9 \* \* \* \*

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

12  
13 **SEC. 401. DEFINITIONS.**

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

16 \* \* \* \*

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

19 \* \* \* \*

20  
21 **SEC. 414A.3. APPLICATION OF RESIDENTIAL CHILD CARE IMPACT FEE.**

22 (a) **Application.**

23 (1) Sections 414A.1 et seq. shall apply to any residential development project  
24 that results in:

25 (A) At least one net new ~~residential~~ dwelling unit;

1 (B) Additional space in an existing ~~residential~~ dwelling unit of more than  
2 800 gross square feet;

3 (C) At least one net new group housing facility or residential care facility;  
4 or

5 (D) Additional space in an existing group housing or residential care  
6 facility of more than 800 gross square feet.

7 (2) Sections 414A.1 et seq. shall not apply to

8 (A) That portion of a residential development project consisting of a retail  
9 use;

10 (B) That portion of a residential development project located on property  
11 owned by the United States or any of its agencies;

12 (C) That portion of a residential development project located on property  
13 owned by the State of California or any of its agencies, with the exception of such property not  
14 used for a governmental purpose;

15 (D) That portion of a residential development project located on property  
16 under the jurisdiction of the Port of San Francisco or the San Francisco Office of Community  
17 Investment and Infrastructure where the application of ~~this~~ Sections ~~41.14A.1~~ 414A.1 et seq. is  
18 prohibited by State or local law; and

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

21  
22 **SEC. 414A.6. OPTION TO PROVIDE ~~ONSITE~~ SMALL FAMILY ~~DAY~~ CHILD CARE HOME**  
23 **IN LIEU OF FEE.**

24 (a) **Election to Provide Designated Child Care Units in Lieu of Residential Child**  
25 **Care Impact Fee.** Consistent with the timing to elect the option to provide On- or Off-site

Units under Section 415.5(g), the sponsor of a development project subject to the requirements of Section 414A.1 et seq., may elect to fulfill all or a portion of the Residential Child Care Impact Fee requirement ~~imposed as a condition of approval~~ by creating one or more Designated Child Care Units in the project, as follows:

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

**TABLE 414A.6A**

**NUMBER OF DESIGNATED CHILD CARE UNITS**

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

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

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

(4) A Designated Child Care Unit shall be reserved for a period of at least ~~ten~~ 15 years from the date the Designated Unit is first leased to a tenant for use as a State-licensed Small Family ~~Daycare~~ Child Care Home; and

1 (5) A Designated Child Care Unit may not be an On-site or Off-site Unit, as  
2 defined in Planning Code Sections 415 et seq. establishing the Inclusionary Affordable  
3 Housing Program.

4 (b) **Calculation of Value of Designated Child Care Unit in Lieu of Residential**  
5 **Child Care Impact Fee.** For purposes of determining the value of a Designated Child Care  
6 Unit to calculate a waiver of the Child Care Fee, the City shall ~~use the~~ *calculate the number*  
7 *Designated Child Care Units being provided multiplied by the average number of children per Unit*  
8 *multiplied by the cost per child care space. The following formula, using numbers derived from the*  
9 *2014 San Francisco Citywide Nexus Study shall be used:*

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

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

14 (c) Development of Procedures. Responsibilities of Operators of Small Family Daycare  
15 Child Care Homes in Designated Child Care Units. Within nine months of the Effective Date of the  
16 ordinance in Board File No. \_\_\_\_\_ amending this subsection (c), the ~~The~~ Office of Early Care and  
17 Education, in consultation with the Mayor's Office of Housing and Community Development, shall  
18 will provide program regulations for Designated Child Care Units. The program regulations shall  
19 include the eligibility and occupancy requirements, the application process and assignment of the units,  
20 and the roles and responsibilities of the agencies in enforcing the program regulations.

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

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



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

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

7 (2) MOHCD shall:

8 (A) publish program regulations on its website and update from time to time;  
9 and

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

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

16 (1) If, in the determination of the Office of Early Care and Education, the tenant  
17 does not begin to operate a State-licensed Small Family ~~Daycare~~ Child Care Home in the unit  
18 within nine months of occupying the unit, or if the tenant ceases to operate a State-licensed  
19 Small Family ~~Daycare~~ Child Care Home at any point in time within ~~ten~~ 15 years from the date  
20 the Designated Child Care Unit is first leased to a tenant to operate a State-licensed Small  
21 Family ~~Daycare~~ Child Care Home, all tenants in the Unit shall be required to vacate the unit  
22 within 180 days, provided that if a Small Family Child Care Home has operated in the unit for 15  
23 years or more, a tenant who operated a Small Family Child Care Home in the unit will not be required  
24 to vacate the unit after such 15-year period;

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

4 (3) The Small Family *Daycare* Child Care Home established in any Designated  
5 Child Care Unit shall serve at least four children of whom the operator of the Small Family  
6 *Daycare* Child Care Home is not a parent or guardian, based on an average over the previous  
7 12 months.

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

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

13 (2) The Designated Child Care Unit shall have two or more bedrooms and shall be  
14 1,000 square feet or more;

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

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

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

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

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

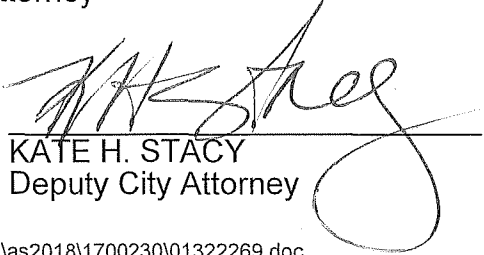
17                   (8) The Designated Child Care Unit shall provide a State-licensed Small Family Child  
18 Care Home in the Designated Child Care Unit for a minimum of 15 years. In the event one or more  
19 tenants has provided such child care in the Designated Child Care Unit for 15 years, the existing  
20 tenant who has provided a State-licensed Small Family Child Care Home in the Designated Child Care  
21 Unit shall not thereafter be obligated to vacate the unit if such tenant ceases to provide a State-licensed  
22 Small Family Child Care Home in the Designated Child Care Unit, and shall be permitted to remain in  
23 the Unit until such tenant elects to vacate or fails to comply with the laws applicable to occupancy of  
24 the Unit. Upon such vacation, the Unit shall not be designated a below market rate unit, and the owner  
25 may rent the Unit at market rate.

1  
2 Section 3. Effective Date. This ordinance shall become effective 30 days after  
3 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
4 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
5 of Supervisors overrides the Mayor's veto of the ordinance.  
6

7 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
9 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
10 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
11 additions, and Board amendment deletions in accordance with the "Note" that appears under  
12 the official title of the ordinance.  
13

14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA  
16 City Attorney

17 By:

  
18 KATE H. STACY  
19 Deputy City Attorney

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22  
23  
24  
25

**REVISED LEGISLATIVE DIGEST**

(Substituted, 12/4/2018)

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

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

Existing Law

The Planning Code currently requires active commercial uses to be provided on the ground floor in certain commercial areas and streets of the City. Residential uses are not considered active commercial uses.

The Planning Code allows certain dwelling units to be designated as Child Care units in lieu of paying the City's Residential Child Care Impact Fee. Such child care units would be considered in calculating maximum density allowed on the site. These Child Care units must remain in child care use for a minimum of 10 years. The Office of Early Care and Education monitors the designated Child Care units.

Amendments to Current Law

The amendments would require a designated child care unit to remain in child care use for a minimum of 15 years.

The amendments would consider a State-licensed Small Family Child Care Home in a dwelling unit to be an active commercial use on the ground floor in certain commercial areas and streets, provided it met the following criteria: (1) the Dwelling Unit is a Rental Unit; (2) the dwelling unit has two or more bedrooms and 1,000 square feet or more; (3) If the dwelling unit is being added to an existing building in the ground floor commercial space, and it is not physically possible to provide two code-complying bedrooms, the unit may have one bedroom and 1,000 square feet or more; (4) no more than one Designated Child Care Unit would be permitted in each building; (5) the Dwelling Unit is eligible to be designated a below market rate unit affordable to moderate-income households, which shall have an affordable rent set at 80% of Area Median Income or less, with households earning from 65% to 90% of Area Median Income eligible to apply for such dwelling unit, but the Dwelling Unit may not be an On-site or Off-site Affordable Housing Unit; (6) a State-licensed Small Family Child Care Home is provided in such Dwelling Unit and complies with the applicable requirements set forth in Planning Code Section 414A.6(d) for a Designated Child Care Unit; (7) if a Designated

Child Care Unit no longer provides a State-licensed Small Family Child Care Home in the unit, the tenants would be required to vacate within 180 days. MOHCD, as assisted by the Office of Early Care and Education, would attempt to fill that unit with a Tenant eligible under the Inclusionary Affordable Housing Program who is also an eligible operator of a Small Family Child Care Home. If the tenant fraudulently did not intend to operate a State-licensed Small Family Child Care Home in the unit within nine months of occupying the unit, all tenants in such unit would be required to vacate the unit within 60 days; and (8) The dwelling unit shall remain a designated child care unit for a minimum of 15 years. Each tenant occupying the Designated Child Care Unit would be obligated to provide a State-licensed Small Family Child Care Home in the Designated Child Care Unit for a cumulative total of at least 15 years. In the event child care has been provided in the unit for such 15-year period, an existing tenant who has provided child care shall not thereafter be obligated to vacate the unit if it ceases to provide child care. Once this tenant vacates the unit, the Unit shall not be designated a below market rate unit, and the owner may rent the Unit at market rate.

The amendments would exclude a designated child care unit from the calculation of maximum density on each site.

The amendments obligate the Office of Early Care and Education and MOHCD to develop procedures and eligibility standards within 9 months, and to provide outreach to the eligible communities about these child care opportunities.

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