

1 [Planning Code - Child Care Requirements for Office and Residential Projects and Associated
2 Fees]

3 **Ordinance amending the Planning Code to increase the Child Care In Lieu Fee for**
4 **office and hotel development projects of up to \$1.57 per gross square foot and apply**
5 **the Fee to projects of 25,000 or more gross square feet; to impose a tiered Child Care**
6 **Fee for residential development projects of up to \$1.83 per gross square feet; to allow**
7 **developers the option to provide onsite Small Family Daycare Homes in lieu of the fee;**
8 **affirming the Planning Department’s determination under the California Environmental**
9 **Quality Act; and making findings of consistency with the General Plan, and the eight**
10 **priority policies of Planning Code, Section 101.1.**

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

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

19 Section 1.

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

25 (b) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

8
9 Section 2. The Planning Code is hereby amended by revising Sections 401, 406,
10 414.3, and 414.8 and adding Sections 414A.1 through 414A.8, to read as follows:

11
12 **SEC. 401. DEFINITIONS**

13 * * * *

14 Designated Child Care Unit. An On- or Off-site Unit provided by a project subject to Section
15 414A and that is designated for use as a Small Family Daycare Home.

16 * * * *

17 Small Family Daycare Home. A Small Family Daycare Home is defined by California Health
18 & Safety Code Section 1596.78(c), as amended from time to time.

19 * * * *

20 **SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT PROJECT**
21 **REQUIREMENTS.**

22 * * * *

23 (b) Waiver or Reduction, Based on Housing Affordability.

24 (1) An affordable housing unit shall receive a waiver from the Rincon Hill
25 Community Infrastructure Impact Fee, the Market and Octavia Community Improvements

1 Impact Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Balboa Park Impact
2 Fee, ~~and~~ the Visitacion Valley Community Facilities and Infrastructure Impact Fee, and the
3 Residential Child Care Impact Fee if the affordable housing unit:

4 (A) is affordable to a household at or below 80% of the Area Median
5 Income (as published by HUD), including units that qualify as replacement Section 8 units
6 under the HOPE SF program;

7 (B) is subsidized by MOHCD, the San Francisco Housing Authority,
8 and/or the San Francisco Redevelopment Agency; and

9 (C) is subsidized in a manner which maintains its affordability for a term
10 no less than 55 years, whether it is a rental or ownership opportunity. Project sponsors must
11 demonstrate to the Planning Department staff that a governmental agency will be enforcing
12 the term of affordability and reviewing performance and service plans as necessary.

13 * * * *

14
15 **SEC. 414.3. APPLICATION.**

16 (a) Section 414.1 *et seq.* shall apply to office and hotel development projects
17 proposing the net addition of 25,000~~50,000~~ or more gross square feet of office or hotel space.

18 * * * *

19
20 **SEC. 414.8. COMPLIANCE BY PAYMENT OF AN IN-LIEU FEE.**

21 (a) The sponsor of a development project subject to Section 414.1 *et seq.* may elect to
22 pay a fee in lieu of providing a child-care facility. The fee shall be computed as follows:

23 Net add. gross sq. ft. office or hotel space × ~~\$1.00~~\$1.57 = Total Fee

24 * * * *

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2 **SEC. 414A. CHILD CARE REQUIREMENTS FOR RESIDENTIAL PROJECTS.**

3 **SEC. 414A.1. PURPOSE AND FINDINGS.**

4 (a) Purpose. Residential developments in the City are benefited by the availability of childcare
5 for persons residing in such developments. However, the supply of childcare in the City has not kept
6 pace with the demand for childcare created by new residents. Due to this shortage of childcare,
7 residents unable to find accessible and affordable quality childcare will be forced either to live where
8 such services are available outside of San Francisco or leave the work force, in some cases seeking
9 public assistance to support their children. In either case, there will be a detrimental effect on San
10 Francisco's economy and its quality of life.

11 The San Francisco General Plan requires that the City “balance housing growth with adequate
12 infrastructure that serves the city’s growing population.” In light of this provision, the City should
13 impose requirements on developers of certain residential projects designed to mitigate the adverse
14 effects of the increase in population facilitated by such projects.

15 (b) Findings. In adopting Ordinance No. 50-15, the Board of Supervisors reviewed the San
16 Francisco Citywide Nexus Analysis prepared by AECOM dated March 2014 (“Nexus Analysis”), and
17 the San Francisco Infrastructure Level of Service Analysis prepared by AECOM dated March 2014,
18 both on file with the Clerk of the Board of Supervisors in File No. 150149. The Board of Supervisors
19 reaffirms the findings and conclusions of those studies as they relate to the impact of residential
20 development on childcare and hereby readopts the findings contained in Ordinance 50-15, including
21 the General Findings in Section 401A(a) of the Planning Code and the Specific Findings in Section
22 401A(b) of the Planning Code relating to childcare.

23

24 **SEC. 414A.2. DEFINITIONS.**

25 See Section 401 of this Article for definitions applicable to Section 414A et seq.

1
2 **SEC. 414A.3. APPLICATION OF RESIDENTIAL CHILD CARE IMPACT FEE.**

3 *(a) Application.*

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

6 *(A) At least one net new residential unit;*

7 *(B) Additional space in an existing residential unit of more than 800 gross*
8 *square feet;*

9 *(C) At least one net new group housing facility or residential care facility; or*

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

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

13 *(A) That portion of a residential development project consisting of a retail use;*

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

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

19 *(D) That portion of a residential development project located on property under*
20 *the jurisdiction of the Port of San Francisco or the San Francisco Office of Community Investment and*
21 *Infrastructure where the application of this Section 41.14A is prohibited by State or local law; and*

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

24
25 **SEC. 414A.4. IMPOSITION OF RESIDENTIAL CHILD CARE IMPACT FEE REQUIREMENT.**

1 (a) Determination of Requirements. The Department shall determine the applicability of
2 Section 414A to any development project requiring a First Construction Document and, if Section 414A
3 is applicable, the number of gross square feet of space subject to its requirements, and shall impose
4 these requirements as a condition of approval for issuance of the First Construction Document for the
5 development project to mitigate the impact on the availability of child-care facilities that will be caused
6 by the residents attracted to the proposed development project. The project sponsor shall supply any
7 information necessary to assist the Department in this determination.

8 (b) Department Notice to Development Fee Collection Unit at DBI. After the Department has
9 made its final determination of the net addition of gross square feet of the space subject to Section
10 414A.1 et seq., it shall immediately notify the Development Fee Collection Unit at the Department of
11 Building Inspection (DBI) of its determination in addition to the other information required by Section
12 402(b) of this Article.

13 (c) Timing of Fee Payments. The Residential Child Care Impact Fee shall be paid at the time
14 of and in no event later than the City issues a First Construction Document.

15 (d) Development Fee Collection Unit Notice to Department Prior to Issuance of the First
16 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing
17 or electronically to the Department prior to issuing the First Certificate of Occupancy for any
18 development project subject to this Section 414A whether the project sponsor has paid the required
19 Residential Child Care Impact Fee. If the Department notifies the Unit at such time that the sponsor
20 has not paid this fee in full, the Director of DBI shall deny any and all Certificates of Occupancy until
21 the subject project is brought into compliance with the requirements of this Section 414A.

22 (e) Process for Revisions of Determination of Requirements. In the event that the Department
23 or Commission takes action affecting any development project subject to Section 414A, and such action
24 is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of
25 Supervisors, or by a court, the procedures of Section 402(c) of this Article 4 shall be followed.

(f) Waiver or Reduction. Development projects may be eligible for a waiver or reduction of impact fees, per Section 406 of this Article 4, including Section 406(d), in the event a project located in an Area Plan may be assessed a child care fee.

SEC. 414A.5. CALCULATION OF THE RESIDENTIAL CHILD CARE IMPACT FEE.

(a) For development projects for which the Residential Child Care Impact Fee is applicable:

(1) Any net addition of gross square feet shall pay per the Fee Schedule in Table 414A.5A; and

(2) Any replacement of gross square feet or change of use shall pay per the Fee Schedule in Table 414A.5B.

TABLE 414A.5A

FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET

<u>Residential projects of 10 or more units</u>	<u>Residential Projects of up to 9 units</u>
<u>\$1.83/gsf</u>	<u>\$0.91/gsf</u>

TABLE 414A.5B

FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE

	<u>Residential Use to Residential Use</u>	<u>Non-Residential to Residential</u>	<u>PDR to Residential</u>
<u>Residential projects of 10 or more units</u>	<u>\$0 /gsf</u>	<u>\$0.26/gsf</u>	<u>\$0.26/gsf</u>
<u>Residential Projects of up to 9 units</u>	<u>\$0 /gsf</u>	<u>\$0.13/gsf</u>	<u>\$0.13/gsf</u>

1 **(b) Credit for On-Site Childcare Facilities.** *A project may be eligible for a credit for on-site*
 2 *Childcare Facilities: The project sponsor must apply to the Planning Department to receive a credit for*
 3 *on-site child care facilities. To qualify for a credit, the facility shall be open and available to the*
 4 *general public on the same terms and conditions as to residents of the residential development project*
 5 *in which the facilities are located. Subject to the review and approval of the Planning Commission, the*
 6 *project sponsor may apply for a credit up to 100% of the required fee. The City shall enter into an In-*
 7 *Kind Agreement with the Project Sponsor under the conditions described for In-Kind Agreements in*
 8 *Section 421.3(d), subsections (2) through (5).*

9 **SEC. 414A.6. OPTION TO PROVIDE ONSITE SMALL FAMILY DAYCARE HOME IN LIEU OF**
 10 **FEE.**

11 **(a) Election to Provide Designated Child Care Units in Lieu of Residential Child Care Impact**
 12 **Fee.**

13 *Consistent with the timing to elect the option to provide On- or Off-site Units under Section*
 14 *415.5(g), the sponsor of a development project subject to the requirements of Section 414A.1 et seq.,*
 15 *may elect to fulfill all or a portion of the Residential Child Care Fee requirement imposed as a*
 16 *condition of approval by creating one or more Designated Child Care Units in the project, as follows:*

17 **(1) The number of Designated Child Care Units in a project subject to this Section**
 18 **414A shall be as follows:**

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

1 (2) A Designated Child Care Unit shall have two or more bedrooms;

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

4 (4) A Designated Child Care Unit shall be reserved for a period of at least ten years
5 from the date the Designated Unit is first leased to a tenant for use as a licensed Small Family Daycare
6 Home.

7 (b) Calculation of Value of Designated Child Care Unit in Lieu of Residential Child Care
8 Impact Fee.

9 For purposes of determining the value of a Designated Child Care Unit to calculate a waiver of
10 the Child Care Fee, the City shall calculate the number Designated Child Care Units being provided
11 multiplied by the average number of children per Unit multiplied by the cost per childcare space. The
12 following formula, using numbers derived from the 2014 San Francisco Citywide Nexus Study shall be
13 used:

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

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

17 (c) Responsibilities of Operators of Small Family Daycare Homes in Designated Child Care
18 Units.

19 The Office of Early Care and Education shall monitor Designated Child Care Units and refer
20 any instances of noncompliance to the Planning Department for enforcement. A tenant of any
21 Designated Child Care Unit shall agree to operate a licensed Small Family Daycare Home in the unit
22 for a minimum of 10 years as follows:

23 (1) Except as provided herein, the tenant must meet the income qualifications to occupy
24 the Unit and shall comply with all other requirements of the City's Inclusionary Affordable Housing
25 Program, Planning Code Section 415 et seq., as it may be amended from time to time. Compliance

1 with the Inclusionary Housing Program requirements shall be determined by MOHCD or its successor.
2 Notwithstanding the Inclusionary Housing Program requirements, for the duration of a tenant's
3 occupancy of a Designated Child Care Unit and operation of a licensed Small Family Daycare Home
4 in the Designated Child Care Unit, MOHCD shall not enforce against the tenant any income
5 requirements that otherwise apply to current tenants;

6 (2) If, in the determination of the Office of Early Care and Education, the tenant does
7 not begin to operate a licensed Small Family Daycare Home in the unit within nine months of
8 occupying the unit, or if the tenant ceases to operate a licensed Small Family Daycare Home at any
9 point in time within ten years from the date the Designated Unit is first leased to a tenant to operate a
10 licensed Small Family Daycare Home, all tenants in the Unit shall be required to vacate the unit within
11 180 days;

12 (3) At least 1/3 of the children served by the Small Family Daycare Home shall be from
13 Households of Low- or Moderate-income, as defined in Section 401; and

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

17
18 **SEC. 414A.7. USE OF FEES.**

19 All monies contributed pursuant to the provisions of Section 414A shall be deposited in the
20 Child Care Capital Fund established by Section 414.14 of this Code.

21
22 **SEC. 414A.8. NOTICE OF AVAILABLE DESIGNATED UNITS.**

23 Whenever a Designated Unit becomes available for rent, within 5 business days, the owner of
24 the Unit shall notify governmental and nonprofit entities that can assist in publicizing the availability of
25 the Unit, including, at a minimum, the following entities: the Office of Early Care and Education, the

1 Family Child Care Association of San Francisco, the Children’s Council, and Wu Yee Children’s
2 Services.

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

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

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

18 By: _____
19 Susan Cleveland-Knowles
20 Deputy City Attorney

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