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.

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

Section 1. Environmental and Land Use 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. 180917 and is incorporated herein by reference.
(b) On November 29, 2018, the Planning Commission, in Resolution No. 20345, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 180917, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code Amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 20345 and the Board incorporates such reasons herein by reference.

Section 2. Child Care Findings.

(a) San Francisco historically invests in the success of children, youth, and their families, most notably with the creation of the Children and Youth Fund in 2001 and its reauthorization in 2014, the passage of Public Enrichment and Education Fund in 2004, which included the Preschool for All program, and the Early Care and Education for All Initiative in 2018.

(b) Despite San Francisco's valiant efforts to support families with young children, there remains a growing gap for those who are seeking access to high-quality early care and education. As of August 2018, there are 3,255 children under the age of 5 that remain on the waitlist for affordable child care.

(c) While the demand for child care grows, there is a nationwide crisis to sustain the early care and education workforce because of the rising cost of living. Early care and education educators earn much less than their counterparts in public school (TK-12). While more than half of early care educators have college degrees, they are among the lowest paid of any profession with degree attainment.

(d) Due to expensive commercial rents and onerous licensing requirements, it has been increasingly difficult for new child care centers to open. In many communities, Family Child Care Homes are the most affordable options available and are often the best choice for families that desire more schedule flexibility.
(e) Family Child Care Homes are licensed by the State of California and allow providers to operate in their own homes. Family Child Care providers play an essential role in the early care and education system as they are the largest providers for infant and toddler care and often reflect the diversity of the neighborhoods they serve, while providing the comfort of a home-based setting. Despite this great service and clear unmet need, Family Child Care capacity has only grown by 4% from 2006-2016.

(f) Many Family Child Care providers operate in rental homes or dwelling units in multi-family buildings. Due to the volatile housing market, providers are at risk of displacement. For Family Child Care providers, losing their home also means losing their source of income.

(g) According to the CPAC Children’s Needs Assessment Report, “San Francisco requires a system of strategies for both capital and operations, including funding for new buildings and renovations, support for new family child care homes, higher pay for teachers to reduce turnover, etc. Family child care homes are especially important for increasing infant and toddler capacity, as more families choose FCC homes for their youngest children.”

(h) The Budget & Legislative Analyst’s Report on Vacant and Abandoned buildings proposed a policy option for the Board of Supervisors to consider allowing more flexible use of commercial spaces, especially on the ground floor, including allowing housing in such space.

Section 2-3. The Planning Code is hereby amended by revising Sections 102, 145.4, 207, 401, 414A.3, and 414A.6, to read as follows:

SEC. 102. DEFINITIONS.

* * * *

Designated Child Care Unit. A Dwelling Unit that is designated for use as a State-licensed Small Family Child Care Home and meets the applicable standards established in Section 414A.6.
SEC. 145.4. REQUIRED GROUND FLOOR COMMERCIAL USES.

(c) Definitions.

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

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

2. Shall include Public Facilities as defined in Section 102 and Public Uses as defined in Section 890.80, except for Utility Installations;

3. Shall not include Residential Care Facilities as defined in Sections 102 and 890.50;

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

Table 145.4

<table>
<thead>
<tr>
<th>Reference for Commercial, Neighborhood Commercial, and Residential-Commercial Districts</th>
<th>Reference for Mixed Use Districts</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * *</td>
<td>* * *</td>
<td>* * *</td>
</tr>
<tr>
<td>102</td>
<td>N/A</td>
<td>Designated Child Care Unit that meets the applicable criteria of Planning Code Section 414A.6</td>
</tr>
<tr>
<td>* * *</td>
<td>* * *</td>
<td>* * *</td>
</tr>
</tbody>
</table>

SEC. 207. DWELLING UNIT DENSITY LIMITS.
* * * *

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

* * * *

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

* * * *

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

* * * *

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

* * * *

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

SEC. 401. DEFINITIONS.

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

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

* * * *

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

(a) Application.

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

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

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

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

or

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

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

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

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

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

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

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

SEC. 414A.6. OPTION TO PROVIDE ONSITE SMALL FAMILY DAY-CHILD CARE HOME IN LIEU OF FEE.

(a) Election to Provide Designated Child Care Units in Lieu of Residential Child 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>
<thead>
<tr>
<th>Residential Project Size</th>
<th>Maximum allowable Designated Child Care Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Projects of 25-100 Dwelling #Units</td>
<td>1 Unit</td>
</tr>
<tr>
<td>Residential Projects of 101-200 Dwelling #Units</td>
<td>2 Units</td>
</tr>
<tr>
<td>Residential Projects of 201 or more Dwelling #Units</td>
<td>3 Units</td>
</tr>
</tbody>
</table>

Supervisors Yee; Ronen, Kim, Cohen, Safai, Brown, Fewer, Mar
(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
    ten 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

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

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

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

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

(c) Development of Procedures. Responsibilities of Operators of Small Family Daycare
    Child Care Homes in Designated Child Care Units. Within nine months of the Effective Date of the
    ordinance in Board File No. 180917 amending this subsection (c), the Office of Early Care and
    Education, in consultation with the Mayor’s Office of Housing and Community Development, shall
will provide program regulations for Designated Child Care Units. The program regulations shall include the eligibility and occupancy requirements, the application process and assignment of the units, and the roles and responsibilities of the agencies in enforcing the program regulations.

(1) The Office of Early Care and Education shall:
(A) develop a set of written procedures, standards, and eligibility requirements for selecting State-licensed Small Family Child Care Home operators for these Designated Child Care Units;
(B) provide outreach and information to the early care and education community about the availability of Designated Child Care Units; and
(C) monitor Designated Child Care Units for program compliance listed in subsection (d) as Responsibilities of Operators of Small Family Child Care Homes and refer any instances of noncompliance as a child care provider to the Planning Department for enforcement.

(2) MOHCD shall:
(A) publish program regulations on its website and update from time to time; and
(B) screen applicants for income and household eligibility and perform annual income certification consistent with the Inclusionary Affordable Housing Monitoring and Procedures Guidelines as updated from time to time.

(d) Responsibilities of Operators of Small Family Child Care Homes in Designated Child Care Units. A tenant of any Designated Child Care Unit shall agree to operate a State-licensed Small Family Daycare Child Care Home in the unit for a minimum of 40 15 ten years as follows:
(1) If, in the determination of the Office of Early Care and Education, the tenant does not begin to operate a State-licensed Small Family Daycare Child Care Home in the unit within nine months of occupying the unit, or if the tenant ceases to operate a State-licensed
Small Family Daycare Child Care Home at any point in time within ten years from the date the Designated Child Care Unit is first leased to a tenant to operate a State-licensed Small Family Daycare Child Care Home, all tenants in the Unit shall be required to vacate the unit within 180 days, provided that if a Small Family Child Care Home has operated in the unit for ten years or more, a tenant who operated a Small Family Child Care Home in the unit will not be required to vacate the unit after such 10-year period;

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

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

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

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

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

(3) If a Designated Child Care 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, such Designated Child Care Unit shall have one bedroom and shall be 1,000 square feet or more;

(4) No more than one Designated Child Care Unit shall 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, as required by Planning Code Sections 415 et seq. establishing the Inclusionary Affordable Housing Program:

(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 owner of the project in which the unit is located shall provide notice to the Mayor's Office of Housing and Community Development (MOHCD) and the Office of Early Care and Education within 30 days. All tenants in the Unit shall be required to vacate the unit within 180 days. The owner of the project in which the Designated Child Care Unit is located shall allow MOHCD, as assisted by the Office of Early Care and Education, to 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, in the determination of the Office of Early Care and Education, 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 shall be required to vacate the unit within 60 days. MOHCD shall use its best efforts to fill such vacated unit with a Tenant registered with the Office of Early Care and Education and licensed to provide Small Family Child Care Home who also meets the Income restrictions for a Designated Unit; and

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

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

Section 4-5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: KATE H. STACY
Deputy City Attorney
File Number: 180917  Date Passed: January 15, 2019

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.

December 10, 2018 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 10, 2018 Land Use and Transportation Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

December 11, 2018 Board of Supervisors - PASSED ON FIRST READING
   Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

January 15, 2019 Board of Supervisors - FINALLY PASSED
   Ayes: 10 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani and Yee
   Excused: 1 - Walton
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/15/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved

London N. Breed
Mayor