



# 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



Exhibit A

# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

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  
*Recommendation:* **Recommend Approval**

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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:

NOES:

ABSENT:

ADOPTED: February 16, 2017

## Exhibit B

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 the public to**

5 **install and maintain at least one baby diaper-changing accommodation that is**

6 **accessible to women and one that is accessible to men, or a single diaper-changing**

7 **accommodation that is accessible to all genders; amending the Police Code to require**

8 **businesses that make a baby diaper-changing accommodation available in a restroom**

9 **accessible to women to also install and maintain a baby diaper-changing**

10 **accommodation in a restroom accessible to men or accessible to all genders;**

11 **amending the Building Code to require that new public-serving establishments, and**

12 **substantially renovated public-serving establishments, install baby diaper-changing**

13 **accommodations; making findings, including environmental findings, findings of**

14 **public necessity, convenience, and welfare under Planning Code, Section 302, and**

15 **findings under the California Health and Safety Code regarding building standards; and**

16 **directing the Clerk to forward this ordinance to the California Building Standards**

17 **Commission upon final passage.**

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

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

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

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

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

23 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code

24 subsections or parts of tables.

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

Section 1. Environmental and Planning Code Section 302 Findings.

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

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

10  
11 Section 2. Pursuant to Charter Section D3.750-5, the Building Inspection Commission  
12 considered the Building Code amendment contained in Section 8 of this ordinance at a duly  
13 noticed public hearing held on \_\_\_\_\_.

14  
15 Section 3. Findings under the California Health and Safety Code.

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

20  
21 Section 4. Name, Background, and Findings.

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

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

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

6 (d) Diaper-changing facilities are essential in childcare. According to a national study,  
7 77% of parents with children under 6 years of age have used diaper-changing facilities;  
8 among them, 34% have used diaper-changing stations six or more times per month.

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

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

22  
23 Section 5. The Planning Code is hereby amended by deleting Section 168, as follows:

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

25 ~~*(a) Definitions.*~~

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

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

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

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

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

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

23          ~~— (3) "Baby Diaper Changing Accommodation." A safe, sanitary and convenient baby~~  
24 ~~diaper-changing station, deck table or similar amenity that is installed or placed in a separate,~~  
25 ~~designated location in a Public-Serving Establishment subject to the provisions of this Section. Such~~

1 accommodations may include, but are not limited to, stations, decks and tables in women's and men's  
2 restrooms or unisex/family restrooms.

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

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

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

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

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

5 (a) This Section 4.1-4 shall apply to all buildings on land owned by the City and County of San  
6 Francisco ("City") and all buildings that are leased to or by the City (collectively, "public buildings"),  
7 whether such buildings are new or existing. For existing buildings, the City department or agency with  
8 jurisdiction over the building shall have six months from the effective date of this Section 4.1-4 to  
9 comply with the requirements.

10 (b) Unless not allowed by an existing lease, each public building shall be required to install  
11 and maintain, at each floor level containing restrooms accessible to the public, at least one Baby  
12 Diaper-Changing Accommodation that is accessible to women and one that is accessible to men, or a  
13 single Diaper-Changing Accommodation that is accessible to all genders. For purposes of this Section  
14 4.1-4, a Baby Diaper-Changing Accommodation means a safe, sanitary, and convenient baby diaper-  
15 changing station, deck table, or similar amenity. Such accommodations may include, but are not  
16 limited to, stations, decks, and tables in women's and men's restrooms or all-gender restrooms. Each  
17 public building shall provide signage at or near its entrance indicating the location of the Baby  
18 Diaper-Changing Accommodations.

19 (c) The installation of all Baby Diaper-Changing Accommodations shall comply with local,  
20 State, and Federal laws relating to access to persons with disabilities. If the Director of the  
21 Department of Building Inspection or his or her designee determines that a public building subject to  
22 this Section 4.1-4 cannot install the Baby Diaper-Changing Accommodations required by this Section  
23 and comply with local, State, or Federal laws relating to access to persons with disabilities, including  
24 Section 11B-226.4 of the California Building Code, or that installation of the Baby Diaper-Changing  
25 Accommodation is otherwise infeasible due to spatial or structural limitations, the Director of the

1 Department of Building Inspection, or his or her designee, may waive the requirements of this Section  
2 for that public building.

3  
4 Section 7. The Police Code is hereby amended by adding Section 3305.4 and revising  
5 Section 3307, to read as follows:

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

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

8 (1) "Business establishment" shall have the same meaning as in Section 3813(b) of this  
9 Code.

10 (2) "Public accommodation" shall have the same meaning as in Title III of the  
11 Americans with Disabilities Act of 1990, 42 U.S.C. Section 12181(7), and the federal regulations  
12 adopted thereunder, as amended from time to time.

13 (3) "Baby Diaper-Changing Accommodation" shall mean a safe, sanitary, and  
14 convenient baby diaper-changing station, deck table, or similar amenity that is installed or placed in a  
15 separate, designated location in a Business Establishment or Public Accommodation subject to the  
16 provisions of this Section. Such accommodations may include, but are not limited to, stations, decks,  
17 and tables in women's and men's restrooms or all-gender restrooms.

18 (b) Requirement. All Business Establishments and Public Accommodations that maintain a  
19 Baby Diaper-Changing Accommodation in a restroom accessible to women shall also install and  
20 maintain a Baby Diaper-Changing Accommodations in a restroom accessible to men or in a restroom  
21 accessible to all genders. The Director of the Department of Building Inspection, or his or her  
22 designee, shall waive compliance with this subsection (b) upon determining that a Business  
23 Establishment or Public Accommodation subject to this Section 3305.4 cannot install the Baby Diaper-  
24 Changing Accommodations required by this Section and comply with local, State, or Federal laws  
25 relating to access to persons with disabilities, including Section 11B-226.4 of the California Building



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

3 **(c) Time for Compliance.**

4 **(1) Existing Businesses and Public Accommodations.** Business Establishments and Public  
5 Accommodations that are subject to this Section 3305.4 and in existence as of the effective date of this  
6 Section shall have six months from the effective date of this Section to come into compliance by  
7 installing and maintaining a Baby Diaper-Changing Accommodation in a restroom accessible to men  
8 or accessible to all genders, if one is not already installed and maintained.

9 **(2) New Businesses and Public Accommodations.** New Business Establishments and  
10 Public Accommodations that choose to install and maintain a Baby Diaper-Changing Accommodation  
11 in a restroom accessible to women shall also install and maintain a Baby Diaper-Changing  
12 Accommodation in a restroom accessible to men or accessible to all genders immediately upon opening  
13 to the public.

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

17  
18 **SEC. 3307. ENFORCEMENT.**

19 (a) Human Rights Commission. Any person who believes that he or she has been  
20 discriminated against in violation of Sections 3303, 3305, 3305.2, ~~or~~ 3305.3, or 3305.4 of this  
21 Article 33 may file a complaint with the Human Rights Commission, which shall serve as a  
22 request to have the Commission investigate and mediate the complaint pursuant to Section  
23 12A.5 of the Administrative Code.

24 \* \* \* \*

1 (f) Responsibilities of the Department of Building Inspection. Upon complaint from a  
2 member of the public or employee of a business establishment or place of public  
3 accommodation, or receipt of a request from the Human Rights Commission, the Department  
4 of Building Inspection shall inspect the business establishment or place of public  
5 accommodation, if subject to Section 3305.3 or 3305.4, and determine if the business  
6 establishment or place of public accommodation is in compliance with the requirements. In  
7 addition, during the course of any regularly-scheduled interior inspection of a business  
8 establishment or place of public accommodation subject to Section 3305.3 or 3305.4, the  
9 Department shall verify compliance with the requirements. Any business establishment or  
10 place of public accommodation found not to be in compliance with the requirements shall be  
11 deemed to be in violation of the Building Code and the Building Official is authorized to abate  
12 the violation in accordance with Section 102A of the Building Code.

13  
14 Section 8. The Building Code is hereby amended by adding new Section 1210.4, to  
15 read as follows:

16 **1210.4. Baby diaper-changing accommodations. At least one Baby Diaper-Changing**  
17 **Accommodation that is open and available for use by women and one that is open and available for use**  
18 **by men, or a single Baby Diaper-Changing Accommodation that is open and available for use by both,**  
19 **shall be installed and maintained in a newly constructed or substantially renovated Public Service**  
20 **Establishment at each floor level containing a toilet room accessible to the public.**

21 **Exceptions:**

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

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

3           1210.4.1 Definitions. For purposes of this Section 1210.4, the following definitions shall  
4 apply.

5           "Baby Diaper-Changing Accommodation" shall mean a safe, sanitary, and convenient  
6 baby diaper-changing station, deck table, or similar amenity that is installed or placed in a separate,  
7 designated location in a toilet room accessible to the public. Such accommodations may include, but  
8 are not limited to, stations, decks, and tables in women's and men's toilet rooms or all-gender toilet  
9 rooms.

10           "Public Service Establishment" shall mean a facility as specified in Subsections (2), (3),  
11 (4), (5), (7), (8), (9), and (12) of the definition of Place of Public Accommodation in Chapter 2 of this  
12 Code.

13           "Substantially Renovated" shall mean any addition, alteration, or repair project  
14 performed under a building permit with a cost of construction of \$50,000 or more.

15           1210.4.2. Signage. Each Public Service Establishment subject to Section 1210.4 shall  
16 provide signage at or near its entrance stating "Baby Diaper-Changing Accommodation Inside." In a  
17 building encompassing multiple establishments and having a central directory, the location of all such  
18 accommodations shall be indicated on the directory.

19  
20           Section 9. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.

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

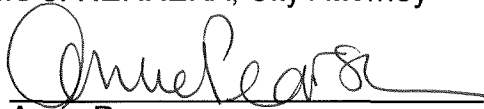
7  
8           Section 11. Undertaking for the General Welfare. In enacting and implementing this  
9 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
10 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
11 is liable in money damages to any person who claims that such breach proximately caused  
12 injury.

13  
14           Section 12. No Conflict with Federal or State Law. Nothing in this ordinance shall be  
15 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
16 federal or state law.

1 Section 13. Directions to Clerk. The Clerk of the Board of Supervisors is hereby  
2 directed to forward a copy of this ordinance to the California Building Standards Commission  
3 upon final passage.  
4

5  
6 APPROVED AS TO FORM:  
7 DENNIS J. HERRERA, City Attorney

8 By:



9 Anne Pearson  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Various Codes - Baby Diaper-Changing Accommodations]

**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 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 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; amending the Building Code to require that new public-serving establishments, and substantially renovated public-serving establishments, install baby diaper-changing accommodations; making findings, including environmental findings, findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings under the California Health and Safety Code regarding building standards; and directing the Clerk to forward this ordinance to the California Building Standards Commission upon final passage.**

### Existing Law

Currently, the installation and maintenance of baby diaper-changing accommodations is regulated by Section 168 of the Planning Code, which requires that all new and substantially renovated “public serving establishments” provide and maintain at least one baby diaper-changing station in a restroom accessible to women, and one that is accessible to men, or a single diaper-changing station in a restroom that is accessible to both.

Section 168 of the Planning Code defines “public serving establishments” to include a range of publicly accessible facilities, including:

- hospitals, health facilities and social services offices;
- retail sales facilities that are at least 5,000 square feet in size;
- arcades, restaurants, movie theaters and other entertainment venues that are at least 5,000 square feet in size;
- San Francisco public libraries, and new, publicly accessible facilities operated by the Department of Recreation and Parks.

For purposes of Section 168, a “substantial renovation” is any construction or renovation project that has an estimated cost of at least \$50,000 for which a building permit is issued, or in the case of City-owned buildings, for which final City approval is given.

### Amendments to Current Law

This ordinance is entitled the San Francisco Bathrooms Accessible for Babies in Every Situation (BABIES) Ordinance. It would delete section 168 of the Planning Code in its entirety, and would replace it with new provisions in the Administrative, Police, and Building Codes requiring the installation and maintenance of baby diaper-changing facilities in a broader range of facilities.

Specifically, the proposed legislation would add Section 4.1-4 to the Administrative Code, requiring all buildings owned or rented by the City to install and maintain, at each floor level containing publicly accessible restrooms, 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 station accessible to all genders. This requirement would be waived where the installation of a baby 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 months from the effective date of the ordinance to come into compliance.

The proposed legislation would add Section 3305.4 of the Police Code to require public accommodations that make baby diaper-changing accommodations available in women's restrooms, to also install and maintain baby 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 baby 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.

Lastly, this ordinance would add Section 1210.4 to the Building Code to require newly constructed or substantially renovated public service establishments to install at least one baby 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 baby 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.

### Background Information

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 would build on the momentum that the federal government has established, to assure adequate diaper-changing facilities in San Francisco's public and private buildings.

Making diaper-changing facilities accessible to men promotes gender equality in child care. Currently, fathers must 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.

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