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## Child Care Planning and Development Policies

This section, which applies primarily to child care centers, discusses two related, but different, means of encouraging the inclusion of child care in developments. They are:

- Incentives to encourage private developers to incorporate child care facilities into their commercial/industrial developments.
- Conditions of approval that address the increased demand for child care due to new development.

### Development Incentives

There are a number of ways that jurisdictions can provide development incentives to encourage the development of child care. Floor Area Ratio (FAR) exclusions and density bonuses are two of the primary means:

#### Exclusion of Child Care from Floor Area Ratio Limitations

FAR refers to the total square footage of development on a given piece of property. Some cities have established an FAR as the maximum square footage for all buildings on a parcel in some zones. The City of Carpinteria has an FAR of 40% in single family zones. For instance, a 35 percent FAR on a 10,000 square foot parcel would allow 3,500 square feet of development (excluding parking and other specifically defined structures). These FAR limitations are described in the zoning ordinance and in the land use element of the general plan.

Many cities have adopted policies excluding child care facilities within a development from the FAR limitations, since they do not affect the employment potential of the business and could not be easily converted to other employment generating uses. This encourages developers to include child care in developments and makes a statement about the desirability of child care facilities in commercial and industrial developments.

#### FAR Bonuses

FAR bonuses may be offered in developments that include child care facilities in their plans. The bonus allows the development an increased density beyond the maximum permitted by the FAR limitation if the development includes child care facilities. Bonuses provide an economic incentive for developers to include child care facilities by allowing a greater density of development beyond the zoning standard.



In 1989, AB 1828, (Gov. Code Section 65917.5) was signed into law, giving cities and counties the authority to grant density bonuses to developments that include child care facilities in commercial or industrial areas. The legislation was designed to encourage greater development of child care facilities by the private sector at points of employment concentration. The legislation also provides advisory guidelines as follows:

*City councils are permitted to grant a developer of a commercial project containing at least 50,000 square feet of floor area a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 feet of outdoor area to be used for a child care facility. An assessment may be levied against the developer (based upon market value) if the area set-aside for the child care facility is not in use within three years or if the developer uses the space for other purposes.*

### **Development Agreements**

Development agreements enable public agencies to negotiate with developers to provide services and/or public improvements in exchange for modifications of zoning requirements. Examples of development agreements could include density bonuses, reduced parking restrictions, or a change in the zoning of a parcel of land in exchange for a public improvement, which enhances the overall development.

Development agreements allow the public agency a great deal of flexibility in addressing the current needs of the community. The jurisdiction can work with a developer without the permanency of an ordinance which would apply to all developments in a given zone district or geographic area. Nexus requirements (described under mitigation below) do not apply to development agreements.

Both the cities of Sunnyvale and Palo Alto have recently entered into development agreements for the provision of child care. The City of Palo Alto has leased land at a development site for one dollar a year for 35 years for the express purpose of establishing a child care center. Sunnyvale entered into an agreement with a developer in a high-density residential development, requiring the inclusion of a child care center in the complex in exchange for increased density. In addition, the City granted the developer additional commercial expansion in a residential area.

### **Conditions of Approval**

Local governments have been concerned about the impact of new development on the availability, affordability, and accessibility of child care for the children of people who live and/or work in the community. If, during the planning process the decision-making body determines that a development project will adversely affect the availability of child care services, they may impose conditions which minimize those effects.



Conditions of approval that are placed on a development project regarding the provision of child care services should not attempt to solve existing community-wide availability or quality problems. Rather, the conditions should address the project's incremental increase in demand for child care services. Child care service conditions should consider the difference between child care needs that exist prior to the development of the project, and the incremental increase in child care demand that would occur as a result of the project. This analysis should also consider impacts to child care services that may result from cumulative development (i.e. other development proposals that are being considered by the jurisdiction). Measures to reduce a project's impact to child care availability may be implemented on the proposed project site or at an off-site location that is near the project site or elsewhere in the community.

Conditions of approval that address a project's impacts on child care availability must also be consistent with legislative mandates that require a jurisdiction to demonstrate that there is a connection, or "nexus," between the identified impact and the requirements of the condition of approval. Additional information regarding this issue is provided below.

Jurisdictions have two alternatives in regard to the implementation of programs and conditions of approval:

1. Developers may be required to take specific actions designed to directly mitigate the project's impact, or
2. Developers may make a payment of development, or in-lieu, fees. These are fees that may be assessed by a locality "in-lieu" of requiring the developer to directly provide the services the mitigation is meant to address.

Each alternative is described below:

### **Direct Mitigation**

One method that can be used to directly mitigate the impacts of a project on the availability of child care is the adoption of an ordinance that requires developers to address the increased child care need created by the project through the inclusion of on- or near-site child care. In some cases, funding for the expansion of an existing program may be required. This direct mitigation would generally have predetermined requirements with regard to the number of new child care slots needed.

Such an ordinance has been adopted in Contra Costa County. The ordinance, adopted in 1988, requires the developer to include a survey or assessment of the estimated child care needs caused by the project in its initial application for a land use entitlement as well as a response program identifying how the developer will address the new child care needs. It is estimated that over \$450,000 of mitigation support was generated between 1988 and 1990 as a result of this ordinance. Generally the mitigation has taken the form of direct financial support to existing providers for program expansion. This mitigation program has provided training grants and other forms of support for local child care programs.



## Development Fees

Development (or in lieu) fees may be paid to the government agency by the developer for any of several reasons, including:

- It is not feasible to directly mitigate the increased child care need;
- The developer would prefer to pay a fee; or
- Because a child care mitigation ordinance call for the payment of a fee.

For residential projects, the fee is usually based on number of units. For commercial projects, the fee is typically based on square footage or on the number of workers. Among those Bay Area cities that have adopted mitigation ordinances, San Francisco, San Ramon, and Concord all include the payment of an in-lieu fee.

San Francisco's ordinance requires developers of office and hotel projects over 50,000 square feet to make space available on or near the development site to a non-profit provider free of charge. Developers may opt to pay a fee of \$1.00 per square foot in-lieu of providing space. Fees are contributed to the city's Affordable Child Care Fund to increase the supply of child care, and to enable low and moderate income families to use these programs.

San Ramon charges \$210 per residential unit and \$.10 per square foot for non-residential development. The city's ordinance was adopted in 1988 with the express purpose of generating funds to establish modular child care facilities at San Ramon's six elementary school sites for before- and after-school care.

Concord charges mitigation fees that are .05 percent of the total cost of the project. The city has averaged \$200,000 in fees per year since adopting the ordinance in 1985. This revenue has been used to fund city child care activities through the Contra Costa Child Care Council, a county-wide non-profit organization. Through a contract with the City of Concord, the Council provides public education, quality assessment for providers receiving Council funding, provider development programs, and child care subsidies for low-income families.

In a different approach, jurisdictions could choose to reduce fees for traffic mitigation, if the project includes on-site child care.

## "Nexus Legislation"

State legislation limits a local government's ability to institute conditions of approval. When in-lieu fees are used to mitigate the effects of a development on a community's child care infrastructure, the fees charged must reflect the quantity of additional child care services needed as a result of the new project. The "Nexus Legislation" (AB 1600), effective January 1, 1989, was added to the California Government Code Sections 66000 -66007. The legislation requires a local agency to perform a two-step process prior to imposing any fees as follows:

- 1) The agency shall determine that the type of development justifies the fee by:



- a) identifying the purpose of the fee;
  - b) identifying the use to which the fee is to be put; and
  - c) identifying a "reasonable relationship" between the use of the fee and the type of development upon which the fee is to be imposed.
- 2) The agency must determine whether a reasonable relationship exists between the amount of the fee and the cost of the facility or other use to which the proceeds of the fee is to be put.

Jurisdictions considering the adoption of a child care mitigation ordinance should address several issues in their studies including:

- What is the city's objective?
- Does the city want to encourage the development of child care within a project, or to supplement existing child care services with additional funding?
- How much control does the city want/need in regard to the mitigation measures?
- How will the imposition of the child care mitigation affect the development climate in the community?
- How will the funds be used?

Obtaining the input of both the child care and development communities can be very important to the successful implementation of such an ordinance.