

**DEPARTMENT OF
CITY PLANNING**

COMMISSION OFFICE
(213) 978-1300

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**CITY OF LOS ANGELES
CALIFORNIA**



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES

200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801
(213) 978-1271

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DIRECTOR

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VACANT
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May 25, 2021

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Dear Honorable Members:

**REPORT ON EARLY CHILDHOOD EDUCATION PROGRAMS AND APPROVAL
PROCESS FOR CHILD CARE FACILITIES; CF 20-0652**

On August 12, 2020, the Planning and Land Use Management (PLUM) Committee considered a report from the Health, Education, Neighborhoods, Parks, Arts, and River (HENPAR) Committee relative to the Early Childhood Education (ECE) programs and the approval process for child care facilities. The PLUM Committee instructed the Department of City Planning (DCP), with the assistance of the City Attorney (CA), and the Department of Building and Safety (DBS) to report back with recommendations on the following requests:

1. Creating an administrative approval process for child care facilities if the applicant complies with licensing requirements and agrees to a set of standard conditions; and
2. Implementing a pre-submittal review process with ECE providers.

And further instructed the Department of City Planning (DCP), with the assistance of the Department of Recreation and Parks (RAP), and the City Attorney (CA) to report back on:

3. Implementing a pilot program that allows Early Childhood Education (ECE) providers to satisfy their outdoor space requirement with public parks.

And further instructed the Department of Building and Safety (DBS) to report back with recommendations for:

4. Reducing or eliminating the “change of use” fee when single family residences used as family child care homes or single family child care homes are converted to child care center facilities.

Background

The term Early Childhood Education (ECE) providers includes both home-based businesses, as well as non-residential facilities. Smaller home-based businesses include Small Family Day Care Homes (up to eight children) and Large Family Day Care Homes (up to 14 children), as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC). Non-residential facilities include Child Care Facilities, as defined in Section 12.03 of the LAMC.

Child Care Facilities are permitted in a variety of ways depending on the zone: by-right, through a Conditional Use Permit (CUP), or through a Zoning Administrator Determination (ZAD). Specifically, Child Care Facilities are a by-right use in the R4, R5 and CR Zones, as well as in the RAS4 zone when on the ground floor. Similarly, Child Care Facilities up to 20 children are a by-right use in the R3 Zone and RAS3 Zone when on the ground floor. A CUP is required for Child Care Facilities in the A zones and remaining R zones. In the CM and M Zones, Child Care Facilities may be approved by CUP if they serve the children of employees of businesses in the vicinity. Lastly, a ZAD is required for Child Care Facilities between 21 and 50 children in the RS and RAS3 zones.

Large and Small Family Day Care Homes are allowed as an accessory use to any dwelling unit in all zones where residential uses are permitted. It is important to note that under Senate Bill 234 (SB 234), the “Keeping Kids Close to Home Act”, which went into effect January 1, 2020, implemented multiple changes to local jurisdictions’ regulation of Small and Large Family Day Care Homes. The changes introduced by SB 234 include the following:

- Made the use of a home as a large family daycare home a residential use of property and a by-right use for the purposes of all local ordinances.
- Prohibited local jurisdictions from imposing a business license, fee, or tax for the privilege of operating a large family daycare home.
- Clarified the definition of “small family daycare home or large family daycare home” to include a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses. A small family daycare home or large family daycare home is where the family daycare provider resides and includes a dwelling or dwelling unit that is rented, leased, or owned.

Historically, Large Family Day Care Homes in the City of Los Angeles were required to file a Notice of Intent to Operate and meet a set of conditions per Section 12.22 A.3(b)(1). However, with the adoption of SB 234 this process has ended, and no such notice or conditions are currently required, reducing the regulatory barriers to start Large and Small Day Care Homes.

Discussion and Response

1. Creating an administrative approval process for child care facilities if the applicant complies with licensing requirements and agrees to a set of standard conditions.

As stated previously, a discretionary approval (CUP/ZAD) is currently required for Child Care Facilities in the A Zones, some of the R Zones and the CM and M Zones depending on size, proximity, and for whom they serve. An amended ordinance is required to create an over-the-counter or ministerial approval process for new application with procedures and standardized conditions. The Council motion included a set of recommended conditions, which are listed below.

- **Hours of Operation** - between 7 a.m. and 7 p.m.
- **Traffic and Circulation** - Drop-off hours are from 7 a.m. to 9 a.m. and Pick-up hours are from 5 p.m. to 7 p.m.
 - A loading zone that can accommodate at least two cars simultaneously for drop-off and pick-up, monitored by a staff member during the hours of drop-off and pick-up.
**If a site does not have a parking lot or driveway that can accommodate at least two cars simultaneously for drop-off and pick-up:
 - Centers that have curb space for drop-off and pick-up also satisfy this condition, so long as it does not obstruct a major intersection or bus lane/stop.
 - Centers shall have the right to place “loading zone” signs along the curbside drop-off and pick-up areas for at least two but not more than three cars.
- **Parking** - A center meets the standard for parking if it has at least one parking spot per staff member.
**The City will allow an exemption for this condition if:
 - Staff commute using public transit or Staff plan on carpooling
 - There is ample street parking within City parking limits
 - The use of the property as an authorized child care facility shall comply with all requirements of State Department of Social Services, Los Angeles Department of Building and Safety, and the Fire Department.
- **Permit** - Approval of this permit will run with the land, and an operator has the right to continue to operate as a child care center under this permit for so long as the above conditions are followed.

Considerations for Ministerial Approval

Currently, in most R zones, Child Care Facilities - unlike Small or Large Day Care Homes - require discretionary approval by City Planning, either through a CUP or ZAD application. The discretionary process allows for individual review of applications in order to respond to specific site conditions and provide solutions to the unique challenges

stemming from a commercial use in a residential neighborhood. The change to an administrative approval would remove discretion and create a standard set of specific and measurable conditions for all applicants in order to ensure consistent implementation.

A move to a standard set of conditions would require evaluation of past approvals to better understand the common universe of conditions that are applied to Child Care Facilities of various types. Parking considerations are a good example of the need for further investigation. In the Zoning Code today, on-site parking requirements are based on a “spaces per square foot” calculation that accommodates employees, visitors and a variety of peak uses. Under the standardized conditions suggested in the Council’s instructions that process would be replaced by a fixed number of spaces and the ability to use off-site parking. This change signifies the removal of site specific consideration of each locations in favor of a standardized approach regardless of size or staffing of the facility, for example. In addition, other Departments would play a significant role in approval of an application that are not currently required under this suggestion which also allows for the use of a “loading zone”. An added “loading zone” moves required parking compliance into the public right of way (on-street parking), which is not governed by City Planning, but rather the Department of Transportation. Furthermore, limiting parking times would require coordination with the Department of Transportation, as well, to install new signage. In summary, further investigation into the standard conditions, situations, and the partnership with other departments is required to provide a comprehensive list standard condition. Additionally, the list of standard conditions could expand or contract beyond that which the Council motion suggested depending on the requisite investigation.

It is important to note that a need for a discretionary approval such as a CUP or ZAD would need to remain for cases where an applicant cannot, or chooses to not, meet the standard conditions. Therefore, even with an established administrative approval process for Child Care Facilities, a CUP or ZAD approval processes would continue to exist to consider those cases.

Finally, it is worth noting the permit history for Child Care Facilities. An analysis of DCP case tracking data over the previous 20 years shows that approximately 100 applications related to Child Care Facilities have been processed. This amounts to an average of five applications per year, with a general breakdown of planning cases as follows:

- 35 - New Child Care Facilities
- 25 - Renewal of Existing Entitlements
- 20 - Expansion of Facilities or Enrollment
- 15 - Conversion of Single-Family Dwellings
- 5 - Conversion of a Commercial location

Approximately half of the applicants are renewing their conditions of approval or expanding their operations which would indicate they are continuing the use and operations. The remainder of the applicants, two to three per year, are expanding or opening new facilities. Unfortunately, there is not planning data to reflect the number of

businesses that cease operations to aid in determining other factors that pose barriers to successfully completing the entitlement and permitting process.

2. Implementing a pre-submittal review process with ECE providers.

As previously discussed, ECE providers include both Home Day Care facilities and non-residential Child Care Facilities. City Planning, Building and Safety, Fire Department and State licensing requirements' process for application is separate for each type of ECE provider. Currently, Preliminary Plan Meetings for building and planning requirements are available at the Metro, Van Nuys, and West LA Development Services Centers for a fee. Although these meetings are an effective resource, counter staff only process a few applications each year which limits their exposure and general knowledge of requirements by other departments and agencies. With that said, if new standardized conditions were to be applied, it is feasible to create a team of individuals across multiple departments knowledgeable on their various roles for a pre-submittal review. It should be stated that this effort may require resources depending on the department's structure and existing capacity.

Today, Home Day Care applications require minimal review by City agencies to complete even if applicants may also have less experience dealing with City requirements. Currently, an applicant for a Home Day Care who completes documents that are available on the Department of City Planning website has everything required for an over-the-counter planning approval, as well as additional guidance on what other external processes - outside of the City's agencies - are required. However, these forms may be difficult for the general public to locate without an identified, central hub for all ECE applications and documents. The Department City Planning could explore updating and expanding their existing online forms and written guidance for Home Day Care providers and Day Care Facilities alike; this would help improve access to resources.

At present, requirements for Child Care Facilities are spread across multiple documents that apply to a variety of land uses, rather than being specific to Child Care Facilities. The Department of City Planning could explore updating and consolidating these documents. Creating forms specific to Child Care Facilities would yield a more aligned procedure and would support a centralized ECE hub outside DCP. In general, co-locating all ECE-related requirements would simplify the pre-application process.

While the full scope of ECE-related regulations and processes exceeds City Planning's jurisdiction of land use review, City Planning and other departments can contribute to more comprehensive resources if a centralized location is developed and maintained. Resources may include developing a web page or guiding documents, and dedicated staff to coordinate inquiries. Ideally, the public's point of contact would have a broad understanding of ECE with the most up to date and consistent information to maintain City resources and track changes in the industry, such as the recent adoption of SB 234. Looking to the example provided by the City of Santa Monica, their ECE Planning Guide and pre-submittal review process is headed by the Santa Monica Department of Housing and Human Services.

3. Implementing a pilot program that allows Early Childhood Education (ECE) providers to satisfy their outdoor space requirement with public parks.

Responding to the council's request for meeting ECE outdoor space requirements through city parks, it is noted that the Los Angeles Municipal Code (LAMC) does not prescribe any Day Care space requirements. All ECE providers are licensed through the State of California Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS) and must meet regulations outlined in the California Code of Regulations (CCR). Inspections compliance and exception of state licensing requirements, which include minimum square footage of outdoor space, are managed through regional offices throughout the state. Specifically, the CCR requires at least 75 square feet per child of outdoor activity space based on the total licensed capacity. Since the requirement for outdoor space is mandated by the CDSS, providing an exception in local ordinance would not have an impact on the State-level mandate.

However, an example of coordination between local government and CDSS does exist for childcare space requirements. San Francisco's Office of Early Care and Education (OECE) worked with State regulators in Sacramento, with the assistance of their regional CCL office, to create a pilot program for city park space meeting licensing needs. Over the course of two years an agreement was developed with Parks and Recreation, CCL and ECE applicants unable to meet on site outdoor space requirements. The City of Los Angeles could explore expanding on this pilot program or developing a local version. In the meantime, City provided guidance materials can note State requirements and that CCL exemptions are possible. Specifically, that CDSS regional offices' licensing personnel can provide relief from CCR requirements based on an individual applicant's situation and resources.

Los Angeles Department of Recreation and Parks (RAP) provides the following analysis of existing park use for Day Care providers, permitting process and a summary of child care operations administered by RAP's Partnership Section.

I. AN OVERVIEW OF RAP'S PERMIT PROCESSES

The Department of Recreation and Parks maintains and operates over 16,000 acres of parkland. RAP maintains hundreds of athletic fields, playgrounds, and fitness areas throughout the City of Los Angeles. RAP offers permits to use picnic areas, gymnasiums, multipurpose facilities, banquet halls, and sports fields and courts. Any individual may be able to obtain this permit through a reservation or through an application form at their Regional Recreation offices. Upon special request, RAP may be able to offer a Right of Entry permit for use of an entire park or large sections of a park for a special event, community event, or filming.

Permits fees are normally associated with use of a type facility. The fee schedules are approved by the Board of Recreation and Parks Commissioners.

RAP does not normally permit exclusive use of pocket parks or playground structures, apparatus, or fitness equipment. These are open to the public during normal park hours and are on a first come first served basis. However, city parks may also be able to accommodate some space requirements for ECE providers through an approved arrangement with State regulators.

II. SUMMARY OF CHILD CARE OPERATIONS ADMINISTERED BY RAP'S PARTNERSHIP SECTION

RAP currently operates two licensed preschools that are staffed with City employees: Jim Gilliam Child Care Center at Jim Gilliam Recreation Center and Ralph M. Parsons Preschool at EXPO Center.

In addition to the two licensed preschools operated by RAP, there are currently 13 child care provider organizations that the RAP's Partnership Section has agreements with or issued a right of entry permit to operate a preschool child development program on park property. The Partnership Section performs annual evaluations of these child care provider organizations. The requirement to request information from the organization once a year and to perform an annual evaluation of their operations is in the agreement with these child care provider organizations.

All the 13 child care providers use City park facilities. Most of them are using the park facilities year round but a few use the facilities based on the Los Angeles Unified School District school year calendar and vacate the property during the summer. All the organizations provide sufficient staff to maintain a staff-to-student ratio in accordance with child care licensing requirements for the operation of preschool related programs in accordance with State of California child care licensing regulations. Currently, only two of the organizations do not meet all State of California child care licensing regulations. Currently, only one organization provides a pilot program for outdoor learning through recreation.

Agreements with these organizations are approved by the Board of Recreation and Park Commissioners. Many of the agreements are for multiple years, from three to six years in term. Recently approved agreements are for a term of three years. Organizations are required to pay cost recovery reimbursement fees to the Dept. of Recreation and Parks to cover utilities, trash disposal and Dept. of Recreation and Parks staff impacts, provide for all staff, materials and supplies for their operations, and perform minor maintenance of the facilities they use to keep the facility clean.

III. RECOMMENDATION

The licensing agency, in this case, the Community Care Licensing Division of the California Department of Social Services, would be the authorizing agency to determine whether an applicant's use of RAP open space would be deemed acceptable. RAP should be made aware that a park under their jurisdiction would be used as part of an application to satisfy open space requirement. RAP may be able to verify whether a space would be

ineligible due to factors such as existing long term agreements, part of another application, undergoing extended renovation or construction, emergency use, or any other reason that would limit or prohibit intended use of the open space. RAP remains committed to working with necessary City departments and Council Offices to ensure that access to City parks is equitable and flexible to fit growing and changing needs.

4. Reducing or eliminating the “change of use” fee when single family residences used as family child care homes or single family child care homes are converted to child care center facilities.

The Los Angeles Department of Building and Safety (LADBS) was instructed to report to the Planning and Land Use Management (PLUM) Committee on reducing or eliminating the “change of use” fee when single-family residences used as family child care homes or single-family child care homes are converted to child care center facilities. A change of use is when an applicant proposes to change the use of a building or a portion of the building from the original building permit. Both Small Family Day Care Homes (up to eight children) and Large Family Day Care Homes (nine to fourteen children) can be operated within a single-family dwelling and do not require a change of use building permit. However, a change of use permit is required to establish a Day Care Center (more than fourteen children) in an existing building that has not already been approved for this use.

I. DAYCARE ESTABLISHMENTS

Los Angeles Municipal Code (LAMC) Section 12.03 defines three types of daycare establishments for children in the City of Los Angeles: (1) Small Family Day Care Home, (2) Large Family Day Care Home, and (3) Child Care Facility (Day Care Center). Per LAMC 12.22 A.3, Small Family Day Care and Large Family Day Care Homes are allowed within any dwelling unit including existing single-family dwellings and therefore a change of use permit is not required. However, a change of use permit is required to convert an existing single-family dwelling to a daycare center. The matrix below provides the general requirements for each type of child daycare establishment.

Use	Small Family Day Care Home	Large Family Day Care Home	Day Care Center
Number of Children Permitted	Up to eight children, including children under the age of 10 who reside in the home	9 to 14 children, including children under the age of 10 who reside in the home	More than 14 children (limitations based on state license and square footage of building or room) ¹
Duration of Stay	Less than 24 hrs per day	Less than 24 hrs per day	Less than 24 hrs per day

¹ "Child Care Center" or "Day Care Center" (or "center") means any child care facility of any capacity, other than a family child care home as defined in Section 102352f.(1), in which less than 24-hour per day non medical care and supervision are provided to children in a group setting. See https://www.daycare.com/california/california_daycare_center_licensing_requirements.html

Type of Building Permitted	Single Family Dwelling	Single Family Dwelling	Any building with Certificate of Occupancy for daycare
Permanent Sleeping Accommodations²	Not permitted	Not permitted	Not permitted
Building Permit Required	No	No	Yes
Plans Required³	No	No	Yes
State License Required⁴	Yes	Yes	Yes
Business Tax Registration Certificate Required⁵	Yes	Yes	Yes
Fire Permit Required⁶	No	Yes, if for more than 12 children	Yes, if for more than 6 children
Fire Department Requirements	Fire extinguishers and smoke detectors	Contact the Fire Department for a complete list	Plans must be submitted to the Fire Department for plan check
Permitted In The Following Zones	A1, A2, RA, RE, RS, R1, RU, RZ, RMP, RW1, RW2, R2, RD, R3, RAS3, R4, RAS4, R5, CR, C1, C1.5, C2, C4, C5, CM	A1, A2, RA, RE, RS, R1, RU, RZ, RMP, RW1, RW2, R2, RD, R3, RAS3, R4, RAS4, R5, CR, C1, C1.5, C2, C4, C5, CM	RAS3, R-4, RAS4, R-5, CR, C1, C1.5, C2, C4, C5 ⁷
Other Zoning Code Requirements	No	See LAMC 12.22A3(b)(1) for complete requirements	Several limitations on setbacks, height, parking, floor area, etc. Consult with the LADBS Zoning Section to verify requirements.

² The use of cots or mats for napping purposes is permitted, provided all employees, attendants, and staff personnel are awake and on duty for the care of the children.

³ Plans must be prepared by a Civil or Structural Engineer or Architect licensed by the State of California.

⁴ For more information regarding state licensing requirements go to www.dss.cahwnet.gov

⁵ The business tax registration certificate can be obtained from the Los Angeles Office of Finance. For more information go to www.lacity.org/finance

⁶ The Fire Permit can be obtained from the Los Angeles Fire Department or the Los Angeles Office of Finance when obtaining the business tax registration certificate.

⁷ Also permitted in the R3 zone for up to 20 children maximum. In accordance with ZA 92-1025 (ZAI) a child care center may also be considered an incidental use to a church, where such a program is conducted by the church. This would also apply where there is existing conditional use status unless the conditional use status terms and conditions specifically prohibit the establishment of a day school, nursery school, or child care program. No additional parking would be required.

Building Code Requirements	No	No	A day care center is considered Group E occupancy per Los Angeles Building Code (LABC). Plans must be presented to LADBS for plan check indicating compliance with all LABC requirements for Group E occupancies.
Disabled Access Requirements	No	No	Yes, must comply with Title 24 requirements

II. CERTIFICATE OF OCCUPANCY

LAMC 91.109 requires a Certificate of Occupancy for every building or structure that certifies the building’s compliance with the permit and is suitable for occupancy. Exceptions to this requirement are when the occupancy is within the same building for which the original building permit was issued; or the use of the building or portion of the building is a Group A or E Occupancy and constructed prior to 1943 and has not been discontinued for a period of more than six months.

III. CHANGE OF OCCUPANCY

LAMC 91.8203 requires a new Certificate of Occupancy when there is a change of occupancy within a building even if there is no physical alteration to the building.

V. FEE WAIVER

California Government Code Section 66014 states “when a local agency charges fees for zoning variances; zoning charges; use permits; building inspections; building permits; filing and processing applications...those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged...”

The main funding source for the LADBS budget is the Building and Safety Building Permit Enterprise Fund (Enterprise Fund). The Enterprise Fund receives monies from fees paid for plan check, permitting, and inspection of new construction in the City. The Enterprise Fund can only be used to finance all the programs, services, and support functions relating to those services for which fees are paid into the Enterprise Fund.

According to the City Attorney, based on the provisions of Proposition 218, certain fees, such as regulatory fees and fees for services other than discretionary services should not be waived. The City Attorney further advised waivers, other than those expressly provided for in the ordinance that establishes the fees, should not be granted to minimize any legal risks to the City. To avoid all of the legal concerns associated with Proposition 218, the City Attorney recommended establishing an account within the General City Purpose Fund (GCP) to reimburse departments and special funds for Council approved subsidies.

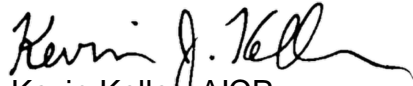
The basis for the City Attorney recommendations on waivers also apply to fee reductions. Further, the City Financial Policies require that specific action is taken to appropriate the necessary funds to fully pay for that service where the Mayor and City Council set the amount of fee below the level required to recover the reasonable cost of providing the service. Therefore, should Council consider a reduction of fees, it is recommended that an alternative source of funds be identified and account within the General City Purpose Fund (GCP) be established to reimburse the special fund for the subsidized amount.

Conclusion

City Planning, the Department of Building and Safety and the Department of Recreation and Parks appreciates the opportunity to provide further analysis of the policy considerations related to Early Childhood Education. If you have any questions, please contact Darby Whipple in the Department of City Planning at (213) 978-1475 or Darby.Whipple@lacity.org.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in black ink that reads "Kevin J. Keller". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kevin Keller, AICP
Executive Officer

VPB:KK:AV:HSC:BK:dw