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TO: City Planning Commission
FROM: M. Rory Bolger, City Planner
Roland Amarteifio, City Planner
RE: Proposed Childcare Facilities Text Amendment
(RECOMMENDING AMENDMENTS TO ORIGINAL DRAFT)
DATE: January 3, 2024

BACKGROUND

In Spring 2023, the Mayor’s Office of Early Learning (OEL) and the Law Department provided a draft text amendment to Chapter 50 of the 2019 Detroit City Code, *Zoning*, relative to three childcare facility land uses: Child Care Centers, Group Day Care Homes (7-12 children), and Family Day Care Homes (1-6 children).

OFFICE OF EARLY LEARNING

On May 4, 2023, then OEL director, Adrian Monge made a presentation to the City Planning Commission (CPC) in anticipation of the statutorily mandated public hearing for Zoning Ordinance text amendments. OEL offered data underscoring the need for additional capacity in childcare facilities given a shortfall of some 15,500 “seats” for children aged 0-5, resulting in 12,000 parents unable to fully engage in the workforce. OEL indicates that only 6% of licensed childcare “seats” are in a home-based setting in contrast to nearly 30% nationally.

SCOPE OF THE June 14th DRAFT ORDINANCE

As indicated in the CPC staff report of June 22, 2023, the draft text amendment from OEL and the Law Department proposed the following:

- to update the **definitions** of “Family Day Care Home,” “Group Day Care Home,” and “Child Care Center” for consistency with recent amendments to State law (*Sec. 50-16-152, Sec. 50-16-201, Sec. 50-16-222*);
- to allow Child Care Centers on a conditional basis in the R1 and R2 Districts where they are currently prohibited, provided they operate as accessory to a “public, civic, or institutional” use that is permitted in the district (*Sec. 50-8-21(2), Sec. 50-8-51(2), Sec. 50-12-43, Sec. 50-12-512(b)*); [NOTE: The Law Department may need to revisit these sections to eliminate possible internal contradiction in permissibility.]

- to allow Child Care Centers on a by-right basis in the PR (Parks and Recreation) District where they are currently prohibited (*Sec. 50-11-145(1), 50-12-43*);
- to allow Family Day Care Homes on a by-right basis in the B1, B2, B4, MKT, and SD2 Districts where they are currently prohibited (*Sec. 50-9-15(4), Sec. 50-9-45(4), Sec. 50-9-105(6), Sec. 50-11-205(2), Sec. 50-11-265(4), Sec. 50-12-43*);
- to allow Group Day Care Homes on a by-right basis in the R1, R2, R3, R4, R5, R6, and SD4 Districts where they are currently a conditional use (*Sec. 50-8-15(2), Sec. 50-8-21(3), Sec. 50-8-45(2), Sec. 50-8-51(3), Sec. 50-8-75(4), Sec. 50-8-81(4), Sec. 50-8-105(4), Sec. 50-8-111(3), Sec. 50-8-135(5), Sec. 50-8-141(4), Sec. 50-8-165(5), Sec. 50-8-171(4), Sec. 50-11-291(7), Sec. 50-11-297(4), Sec. 50-12-43*);
- to allow Group Day Care Homes on a by-right basis in the B1, B2, B4, B5, and SD1 Districts where they are currently prohibited (*Sec. 50-9-15(5), Sec. 50-9-45(5), Sec. 50-9-105(7), Sec. 50-9-135(8), Sec. 50-11-235(6), Sec. 50-12-43*);
- to prohibit Group Day Care Homes in “multiple-family dwellings,” “lofts,” and “residential uses combined in structures with permitted commercial or industrial uses” (*Sec. 50-12-185(b)*);
- to require Child Care Centers to provide 100 square feet of outdoor play area per child or 1,200 square feet, whichever is greater, where 2,000 square feet of outdoor play area are currently required (*Sec. 50-12-183(2)*);
- to allow for the consideration of suitable outdoor play areas at Child Care Centers that are not immediately adjacent to the center (*Sec. 50-12-183(4)*);
- to eliminate the portion of the off-street parking requirement for Child Care Centers based on the capacity of the center while retaining the portion of the requirement based on the number of employees (*Sec. 50-14-39*); and
- to extend the applicability of certain noise standards to protect child care facilities (*Sec. 50-14-587*).

RESULTS OF PUBLIC HEARING

On June 29, 2023, the CPC conducted a public hearing on the June 14, 2023 draft text amendment dated June 14, 2023. Considerable discussion among commissioners took place and nine comments from the public were recorded. Of the 11 proposed changes to Chapter 50, opposition was raised only regarding Group Day Care Homes newly being permitted on a by-right basis in the R1, R2, R3, R4, R5, R6, and SD4 zoning districts, as opposed to a conditional basis, as is currently required.

Commissioners questioned the desirability and impact of allowing an unlimited number of Group Day Care Homes on a given block, noting special concern for nearby senior residents. Commissioners noted the lack of required notification of those nearby for uses permitted by right and requested the Buildings, Safety Engineering and Environmental Department (BSEED) fee

schedule information. Commissioners and the public wondered how other communities regulate Group Day Care Homes with regard to spacing and permissibility.

Four members of the public opposed the proposed change of permissibility of Group Day Care Homes from conditional to by-right, while two others supported the change; three others raised questions for clarification.

CONTINUED DISCUSSION

The CPC continued the discussion of the childcare ordinance at its meeting of September 21, 2024. Stemming from conversations with City Council Member Scott Benson, Attorney Dan Arking of the Law Department suggested a pathway to approval for a land use, such as Group Day Care Homes, that differs from the customary by-right and conditional approaches.

Characterized as an “Alternative SLU” approach, the City would notify owners and residents within 300 feet of a proposed Group Day Care Home at the applicant’s expense. If, subsequently, requested by a nearby party(s), a special land use hearing would be held at the nearby party(s)’s expense; if no hearing is requested, the use would be approved.

Unlike conditional use procedures, the burden of proof for an Alternate SLU would be tilted in favor of the proposed use and the party(s) requesting the hearing would bear the burden of showing possible detriment resulting from the establishment of the use.

While staff is not ready to recommend this approach for Home Day Care uses at this time, we feel it may be useful to consider in the future for uses whose approval is not quite satisfactorily handled by the established by-right and conditional avenues.

FINDINGS

Per requests of the Commissioners, staff posed several questions to BSEED and learned that the fee for a Special Land Use hearing is \$1,160, however per the Mayor's office, Group Day Care Homes need only to pay \$1,000 with the \$160 site plan review fee being absorbed by the City. An applicant/owner can pay over time on a payment plan. However, it should be noted, BSEED’s fee for Special Land Use hearings increased to \$1,171 on January 1st, 2024.

The typical lag time between a special land use hearing and a written decision and order is around 30 days unless a recommendation from the Planning and Development Department is delayed.

Other Communities’ Approaches to Permitting Group Day Care Homes

Commissioners were interested in knowing how other communities treat Group Day Care Homes. The OEL researched 15 Michigan communities to ascertain their handling of **Group Day Care Homes** as a land use, finding that Detroit is not unusual in treating group day care as a Special Land Use (SLU). (Detroit refers to “Special” Land Uses as “Conditional” Land Uses.) Below is a summary of how these other cities regulate Group Day Care Homes:

- Birmingham: 750-foot spacing; accessory use
- Dearborn: SLU
- Grand Rapids: accessory use
- Lansing: SLU

- Livonia: 1,000-foot spacing; conditions
- Mt. Clemens: SLU; 1,500-foot spacing.
- Novi: SLU; opaque fencing; ½-acre lot
- Pontiac: SLU; 500-foot spacing from state-licensed residential facilities
- Rochester: 1,500-foot spacing; conditions
- Romulus: accessory with conditions in some districts; SLU in some districts.
- Royal Oak: SLU?
- Southfield: SLU
- Troy: SLU
- Warren: SLU at Zoning Board of Appeals; 750-foot spacing
- Ypsilanti: accessory; SLU [depending on district]

SURVEY RESULTS—Skepticism diminished

CPC staff was highly skeptical of the welcoming response suggested by the OEL of a neighborhood to Group Day Care Homes that might be permitted on a by-right basis and without notification and the possibility of input from the neighbors. The OEL’s initial electronic questionnaire yielded very positive but very limited responses—17 completed surveys, mainly by those already known to the OEL.

Staff noted that this initial survey only reached those who had email and communicated electronically and that many long-time and older residents might be missed. Since the location of 66 state-licensed Group Day Care Homes was known, a broader survey was undertaken by CPC staff in conjunction with the OEL in order to contact every household on the same block (both sides) as an existing Group Day Care Home.

This resulted in the mail-out of 1,853 “neighborhood community impact surveys” by first class mail. Recipients were asked to respond by returning the 12-question survey in the enclosed postage-paid envelope or by responding on line using the provided link or QR code. A total of 138 responses were received: 77 mailed responses were received by the CPC office and 61 electronic responses were received by the OEL.

To the surprise of CPC staff, 52% of respondents reported being unaware of the existence of a nearby in-home childcare facility even though a state-licensed Group Day Care Home was located on their block. This response comported with BSEED’s observations that Group Day Care Homes have not been a notable complaint generator and that opposition to these homes at special land use hearings has not been uniform.

CPC staff’s initial concern that longtime residents might have been overlooked in the survey, was allayed, finding that nearly half of all respondents (47% overall) had resided “in the neighborhood” for more than 20 years (61% of mailed responses and 33% of electronic responses).

Our analysis of the survey data suggests that perceived benefits from in-home childcare substantially outweighed concerns. Some 66% of responses identified the benefit of care being provided in the family’s own neighborhood. Such proximity was noted for convenience in walking children to the home and because the provider “knows the neighborhood and the assets

it provides for young children and families” and “families are more easily able to participate in the workforce.”

The survey also asked about concerns, “when there is a child care program in the heart of your neighborhood.” Of 126 responses to that question, 77 (61%) indicated, “I don’t have any concerns at this time.” Concerns that were noted included that, “It changes the look/feel of the community” and several mentions of “unacceptable noise levels,” “additional traffic,” and “children playing outside without a fence.”

ADDITIONAL FINDINGS

As indicated in earlier CPC staff presentations:

- Of 89 licensed Family Day Care Homes in Detroit, 85 are located in the R1 and R2 Districts.
- Of 62 licensed Group Day Care Homes in Detroit, 60 are located in the R1 and R2 Districts.
- Of the 302 licensed Child Care Centers in Detroit, 124 are located in the R1 or R2 Districts—typically within a school.
- Of the 302 licensed Child Care Centers, 110 are located in the B2 or B4 Districts—typically as a commercial operation.
- A “typical” Group Day Care Home sits on a 40-foot wide lot on a block with 25 neighboring dwelling units; lot widths of existing Group Day Care Homes varies from 30 feet to 100 feet.
- Typical blocks hosting Group Day Care Homes:
 - 13 of 66 blocks shorter than 600 feet.
 - 36 of 66 blocks 600-899 feet.
 - 17 of 66 blocks 900 feet and longer

ROLE OF THE STATE

Commissioners, staff, and the public all sought clarification as to the role and responsibility of the state as opposed to the city. We note the following:

- All three childcare facilities require licensing by the Michigan Licensing and Regulatory Affairs (LARA) Department per the statutory provisions of the Michigan Childcare Licensing Act, Public Act 116 of 1973 (MCL 722.111 – 722.127).
- Family and Group Day Care Homes are additionally subject to the Licensing Rules for Family and Group Child Care Homes in the Administrative Code (R400.1901 – R400.1963), requiring at least 600 square feet of outdoor play area for Group Day Care Homes and a minimum of 35 square feet per child of safe, usable, accessible indoor floor space, not including bathrooms and storage areas.” (The Administrative Code is silent, however, on spacing provisions to avert potential saturation of a given area.)
- The fitness of a childcare provider, the suitability of the facility and the maximum capacity of a facility are all determined by LARA.

EQUITY

The American Planning Association (APA) has published “Equity in Zoning Policy Guide,” a document that was approved by the APA Delegate Assembly on December 15, 2022 and ratified by the APA board on December 20, 2022. Last year’s APA convention in Philadelphia and the Michigan Association of Planning’s conference in Traverse City focused significantly on this theme and it has been a guiding principle of the CPC’s own ZONEDETROIT project.

The authors of the policy guide poignantly suggest:

Zoning cannot change the fact that anything that makes housing, education, transportation, health care, or childcare more expensive will tend to perpetuate the disadvantages faced by historically disadvantaged and vulnerable communities as well as other low-income Americans (Pg. 7).

Staff submits that a conversion of Group Day Care Homes from a conditional use to a by-right use will make it less expensive to establish this use, which is favored by many families unable to afford more expensive and frequently less convenient Child Care Centers, noting that the very providers of this care frequently are themselves low-income Detroiters.

CPC STAFF RECOMMENDED AMENDMENTS TO DRAFT ORDINANCE

CPC staff finds the OEL’s portrayal of the need for additional in-home childcare facilities persuasive.

We concur that in-home childcare particularly responds to the needs of low-income Detroiters.

We recognize that in-home childcare providers are typically low-income themselves and that a \$1,071 filing fee for a Special Land Use hearing presents an obstacle to the expansion of in-home childcare services.

We also understand from BSEED that historically Group Day Care Homes have not been a notable complaint-generating land use and that SLU hearings for Group Day Care Homes have typically not been heavily attended and have resulted in approval.

Based on the data from the “Neighborhood Impact Survey” sent out by CPC staff, we find that 52% of respondents were unaware of the existence of a nearby in-home childcare facility even though a state-licensed Group Day Care Home was located on their block.

Our analysis of the survey data suggests that perceived benefits from in-home childcare substantially outweighed concerns and that potential negative impacts from Group Day Care Homes can be meaningfully addressed by specific use regulations applicable to them as a by-right use, which we enumerate as follows:

- That the prohibition of Group Day Care Homes in multiple-family dwellings, lofts, and mixed-use buildings stated in Sec. 50-12-185(b) be retained as proposed, leaving Group Day Care Homes to be permitted on a by-right basis, subject to use regulations, within single-family dwellings, two-family dwellings, and townhouses.
- To expand Sec. 50-12-130 to specify that no Group Day Care Home be located on the same block as an existing Group Day Care Home or within 500 linear feet of an existing

Group Day Care Home, whichever is less. *On a “typical block” with 40-foot wide lots, this spacing restriction would have the effect of preventing a second Group Day Care Home on the adjoining twelve lots on either side of the existing Group Day Care Home on both sides of the street, resulting in some 50 lots rendered ineligible for a Group Day Care Home.*

- To expand Sec. 50-12-185 to specify that upon approval of a Group Day Care Home, notification be sent by the City to all properties on the same block as the newly approved Group Day Care Home or within 500 linear feet of the new Group Day Care Home, whichever is less, identifying the location of the Group Day Care Home and the operator of the Group Day Care Home, and providing contact information for the enforcing agencies (the Michigan Licensing and Regulatory Affairs Department and City of Detroit Buildings, Safety Engineering and Environmental Department).
- To expand Sec. 50-12-185 to specify that the rear yard of a Group Day Care Home be fenced.
- To expand Sec. 50-12-185 by adding a “nuisance” provision consistent with the existing provision applicable to home occupations against operating “...in such a manner so as to create a nuisance to surrounding property. Nuisances created ... stemming from traffic, parking, noise, or disturbance of the peace shall be considered "nuisances in fact."

NEXT STEPS

Should the Commission determine to amend the originally proposed Chapter 50 text amendment of June 14, 2023, the Law Department has indicated its preparedness to prepare an updated draft text amendment for a new public hearing to be scheduled at the City Planning Commission.

QUICK-REFERENCE TABLE: PERMISSIBILITY AND REGULATION

Land Use	Existing Provisions	Proposed (June 14)	CPC Staff Recommendation
Child Care Centers	Prohibited as principal use in R1, R2, PR zones.	Permit as SLU in R1, R2 where accessory to a permitted “Public, Civic, or Institutional” use. Newly permit by right in PR.	Retain as proposed.
Family Day Care Homes (1-6 children)	Limited to R1 through R6, by right.	Add B1, B2, B4, MKT, and SD2, by right.	Retain as proposed.

<p>Group Day Care Homes (7-12 children)</p>	<p>Conditional use in R1 through R6 and SD4.</p> <p>No spacing required.</p> <p>300-foot notice required for special land uses.</p> <p>Fencing: no requirement.</p> <p>Nuisance: no use specific requirement.</p> <p>No limit on type of dwelling unit.</p>	<p>By right in R1 through R6, B1, B2, B4, B5, SD1, SD2, and SD4.</p> <p>No spacing required.</p> <p>No notice required for by-right uses.</p> <p>Fencing: no requirement.</p> <p>Nuisance: no use specific requirement.</p> <p>Prohibited in multiple-family dwellings, lofts, and mixed-use.</p>	<p>Amend to add four use regulations.</p> <p>Provide 500-foot spacing between any two uses on the same block.</p> <p>City notifies those within spacing area upon approval.</p> <p>Fencing: rear yard fence required.</p> <p>Nuisance: same nuisance provision as for home occupations.</p> <p>Retain proposed limits on types of dwellings hosting group day care.</p>
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