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April 3, 2024

HONORABLE CITY COUNCIL

RE: Proposed and Revised Childcare Facilities Text Amendment to Chapter 50, *Zoning*, (RECOMMEND APPROVAL)

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).

The text amendment was requested by the Administration to remove certain obstacles to the establishment of these childcare facilities and to provide greater availability of childcare resources citywide.

SCOPE OF THE CPC-RECOMMENDED ORDINANCE

On February 22, 2024, the City Planning Commission (CPC) voted to recommend a revised draft of the text amendment:

- 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; *Secs. 50-16-152, 50-16-201, 50-16-222;*
- to allow **child care centers** as a principal land use on a conditional basis in the R1 and R2 Districts where they are currently prohibited and as an accessory use to “public, civic, and institutional uses”; *Sec. 50-8-21, 50-8-51, 50-12-43, 50-12-512;*
- to allow **child care centers** on a by-right basis in the PR District where they are currently prohibited; *Secs. 50-11-145, 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; *Secs. 50-9-15, 50-9-45, 50-9-105, 50-11-205, 50-11-265, 50-12-43;*

- to specify the **minimum distance between** any two **group day care homes** as the lesser distance of: 1) on the same block face or 2) 500 linear feet; *Sec. 50-12-130*;
- to require **notification** by the City of nearby properties upon approval of a **group day care home** identifying its location and the care provider and providing contact information of the related state and local regulatory agencies; *Sec. 50-12-185(c)*;
- to require **family day care homes and group day care homes** to provide **rear yard fencing** where rear yards are present; *Sec. 50-12-185(e)*;
- to require **family day care homes and group day care homes** to operate so as to not create a **nuisance**; *Sec. 50-12-185(f)*;
- to continue to allow **group day care homes** on a conditional basis in the R1, R2, R3, R4, R5, R6, and SD4 Districts where they are currently a conditional use; *Secs. 50-8-21(4), 50-8-51(4), 50-8-81(4), 50-8-111(3), 50-8-141(4), 50-8-171(4), 50-11-297(4)*; and to newly allow **group day care homes** on a conditional basis in the B1, B2, B4, B5, SD1, and SD2 Districts where they are currently prohibited; *50-9-21(4), 50-9-51(4), 50-9-111(3), 50-9-141(1), 50-11-241(3), 50-11-172(3)*;
- to prohibit **group day care homes** in “multiple-family dwellings,” “lofts,” and “residential uses combined in structures with permitted commercial or industrial uses;” *Sec. 50-12-18(a) & (b)*;
- to allow **group day care** homes on a by-right basis where the premises and operator have been licensed as a Family Day Care home for at least one year, subject to applicable specific use standards in the R1, R2, R3, R4, R5, R6, B1, B2, B4, B5, SD1, SD2, and SD4 Districts; *Secs. 50-8-15, 50-8-45, 50-8-75, 50-8-105, 50-8-135, 50-8-165, 50-9-15, 50-9-45, 50-9-105, 50-9-135, 50-11-235, 50-11-265, 50-11-291*;
- 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*;
- 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*;
- 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*;
- to extend the applicability of certain **noise** standards to protect child care facilities; *Sec. 50-14-587*.

FINDINGS

Per requests of the Planning Commission, the Buildings, Safety Engineering and Environmental Department (BSEED) reported that the fee for a Special Land Use hearing is \$1,160. An

applicant/owner can pay over the course of time on a payment plan. However, it should be noted, BSEED's fee for Special Land Use hearings subsequently increased to \$1,171 on January 1st, 2024.

Other Communities' Approaches to Permitting Group Day Care Homes (7-12 children)

Commissioners were interested in knowing how other communities treat Group Day Care Homes. Prior to the January 5th CPC meeting, the OEL had 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, the terms being interchangeable.)

The OEL gathered additional information from other communities to share at the February 15th meeting. Below is a summary of how the other aforementioned 15 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

Given the concern voiced over Group Day Care homes, a broad survey was undertaken by CPC staff in order to contact every household on the same block (both sides) as an existing Group Day Care Home; 1,853 "neighborhood community impact surveys" were sent out by first class mail. Recipients were asked to respond by returning a 12-question survey in the enclosed postage-paid envelope or by responding online 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. Interestingly, 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 complaint generator and that opposition to these homes at special land use hearings has been small. 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).

Analysis of the survey data suggested 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.”

Following the January 5th CPC meeting, OEL conducted additional surveying, the response to which was reported out at the February 15th hearing, showing results sympathetic to in-home childcare consistent with earlier responses.

ADDITIONAL FINDINGS

The CPC found:

- 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 or church or community center.
- 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

At various CPC meetings, Commissioners, staff, and the public had sought clarification as to the role and responsibility of the state as opposed to the city. At the June 29th public hearing, Latanya Ellington represented the Michigan Licensing and Regulatory Affairs (LARA) Department with respect to childcare licensing; she was also present at the February 15th hearing as well.

It was noted:

- All three childcare facilities require licensing by LARA 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.
- The city, not the state, determines in which zoning district a childcare facility may be located and what, if any, additional regulations apply.

RESULTS OF CPC PUBLIC HEARINGS

June 29, 2023

Following a May 4, 2023 presentation by then OEL director, Adrian Monge, the CPC conducted a public hearing on the draft text amendment on June 29, 2023. Considerable discussion among commissioners took place and nine comments from the public were recorded, almost exclusively related to Group Day Care Homes.

At the September 21, 2023 meeting, updates to the Commission were presented, including survey questionnaire findings, and on January 5, 2024, the Commission voted to accept the staff recommendation to revise the draft to address concerns of the public and the Commission.

Four revisions, all related to Group Day Care homes permitted by right resulted from the January 5th vote:

- To establish a spacing requirement between any two Group Day Care homes to prevent more than one such home on the same block face or within 500 linear feet, whichever is the lesser distance;
- To require notification by the City to nearby properties upon approval of a Group Day Care home, identifying its location and the care provider and providing contact information of the related state and local regulatory agencies;
- To require Family Day Care homes and Group Day Care homes to provide rear yard fencing where rear yards are present; and
- To require Family Day Care homes and Group Day Care homes to operate so as to not create a nuisance.

The Law Department updated the draft ordinance in order that a second public hearing could be held at the CPC.

February 15, 2024

The second public hearing was held to consider the substantively revised text amendment on February 15, 2024. In addition to CPC staff, OEL Director, Lisa Sturges, and Law Department attorney, Daniel Arking, were present to provide information and respond to questions.

Some 68 virtual attendees were noted, 15 of whom presented statements for the record. Of the seven speakers present in chambers for the hearing, one spoke in support of the proposed text amendment and six spoke in opposition. Of the nine virtual attendees who spoke, eight offered favorable comments, one spoke in opposition.

Nine written statements were submitted by organizations, all in support of the proposed ordinance. Additionally, a petition of support signed by 263 individuals was also received.

In response to numerous references to possible unwelcome effects of changing Group Day Care homes from a conditional use to a by-right use, the Law Department representative reported that since 2017, BSEED had held 29 Conditional Use hearings for Group Day Care homes, resulting in no denials; Law noted further that BSEED has not issued blight violations or property maintenance code violations against Group Day Care homes.

EQUITY

As noted at the January 5th and February 15th CPC meetings, 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. The 2023 APA convention in Philadelphia and Michigan Association of Planning’s 2023 conference in Traverse City focused significantly on this theme and it has been a guiding principle of the CPC’s own ZONE:DETROIT 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).

A conversion of Group Day Care Homes from a conditional use to a by-right use would 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 in-home child care frequently are, themselves, low-income Detroiters. The revisions requested by the Planning Commission on January 5, 2024 were intended to help bring the proposed text amendment closer in line with the APA’s equity policy.

DELIBERATIONS AND VOTE

The CPC meeting of February 22, 2024 was the eighth meeting at which the Childcare Ordinance appeared on the Commission’s agenda. To facilitate its review, a summation report was received from staff which offered three options for addressing the conflicting preferences regarding Group Day Care homes.

Option 1	To approve or deny the revised text amendment as presented and heard on February 15, 2024	Group Day Care Homes would be allowed on a by-right basis, rather than as Conditional or Prohibited, in most zoning
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		districts in single- and two-family dwellings and townhouses subject to 500 linear-foot spacing and notification of those nearby.
Option 2	To retain all February 15 th definitions and provisions as proposed for Child Care Centers and for Family Day Care Homes but permit Group Day Care Homes only as a Conditional use in the specified zoning districts without the revision for spacing.	Group Day Care Homes would be allowed in more zoning districts but the Conditional Use hearing would be relied on to gauge possible deleterious effect.
Option 3	To retain all February 15 th definitions and provisions as proposed for Child Care Centers and for Family Day Care Homes but to specify Group Day Care Homes as a “Conditional/By-right” use.	Group Day Care Homes would continue to be a Conditional use in R1, R2, R3, R4, R5, R6 and SD4 and they would newly be allowed as a Conditional use in B1, B2, B4, B5, SD1, and SD4. However, Group Day Care Homes would newly be permitted as a by-right use where an existing Family Day Care Home seeks to convert to a Group Day Care and: *Has a State license as a Group Day Care; *Has operated legally for a year as a Family Day Care Home; and *Complies with the four revised provisions (spacing, notice, yard fencing, nuisance).

A motion was made to adopt Option One. The motion failed on a vote of 2-6. After reconsideration of the vote, a motion was made to adopt Option Three. That motion passed on a vote of 6-2. Attached is an ordinance prepared, revised, and updated by the Law Department that reflects the recommendation of the City Planning Commission.

Respectfully submitted,

DONOVAN SMITH, Chairperson



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cc: Lisa Sturges, Office of Early Learning
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