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Regulations Affecting Child Care; An Overview

Child care facilities in California are subject to complex and overlapping regulation by both the State and local levels of government. The State is responsible for licensing these facilities, while local jurisdictions regulate child care through their land use regulations. The ability of local jurisdictions to regulate child care is, however, somewhat constrained by State law. Planners need to be informed about the role that each level of government plays in the regulation of child care facilities.

Definitions (Community Care Licensing)

Child care facility – A facility that provides non-medical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on a less than a 24-hour basis. Child care facilities include day care centers and family day care homes.

Family day care home – A home that regularly provides care, protection, and supervision of 14 or fewer children, including children in the provider’s own home for periods of less than 24 hours per day, while the parents or guardians are away, and includes the following:

- **Small family day care home** – a home that provides family day care to eight or fewer children, including children under the age of 10 years who reside at the home, and as defined in the Health and Safety Code – Child Care Act (Amended, 1999).
- **Large family day care home** - a home that provides family day care to 7 to 14 children, including children under the age of 10 years who reside at the home and as defined in the Health and Safety Code – Child Care Act (Amended, 1999).

Day care center – any child care facility other than a family day care home, including infant centers, preschools, and school age day care facilities.

- **Employer-sponsored child care center** – any child care facility at the employer’s site of business operated directly or through a provider contract by any person or entity having one or more employees, and available exclusively for the care of children of that employer, and of the officers, managers, and employees of that employer.



State Regulation of Child Care

All child care facilities (Family Day Care Homes and Child care Centers) are licensed by Community Care Licensing, a division of the Department of Social Services, State of California. The State requires facilities to meet certain minimum health and safety standards in order to receive a license. See Appendix A for applicable sections of the Health and Safety Code relating to Child Care Facilities.

Since Community Care Licensing regulates the *physical requirements* for child care facilities, there is no need to duplicate this review at the local level. Applicants with questions about physical facility standards should be directed to Community Care Licensing.

State and Local Regulatory Jurisdictions

For Large Family Care

| <p align="center">State of California Community Care Licensing and Fire Marshall</p> <p align="center">(For full list of regulations, see Appendix A)</p> | <p align="center">Local Land Use Agencies (Cities/Counties)</p> |
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| <ul style="list-style-type: none"> • Bathroom facilities • Equipment safety • Fencing • Disaster plan, extinguishers, smoke detectors, emergency evacuation drills • Food preparation facilities • Health and safety issues of children • Health assessments and TB tests • Hours of operation • Indoor and outdoor space • Number and ages of children • Paperwork requirements for children and staff • Personnel fingerprinting, FBI clearance and child abuse index check • Personnel qualifications – training and experience • Ratio of teachers to children • Sleeping facilities | <ul style="list-style-type: none"> • Noise • Parking • Spacing and Concentration • Traffic Control |



Local Regulation of Child Care

In addition to the health and safety requirements imposed by the State, large family child care homes and child care centers may be subject to land use regulation on a local level. State law does, however, impose some limitations on a local jurisdiction's ability to regulate child care. Those limitations include:

Family day care homes

- State laws specifically address what localities may do in regulating small and large family day care homes (See Appendix A).
- Family day care homes are considered an accessory use of residential zoned and occupied property. They cannot be regulated as a home occupation.
- Small family day care homes are permitted by right anywhere a single family home is permitted. These homes are exempt from the local zoning permit process and business license fees. By State law the names and locations of these small family homes are to be kept confidential. Only resource and referral agencies and child care provider associations have access to this information.
- As a result of legislation effective in 1984, jurisdictions may no longer utilize discretionary land use entitlements (i.e., permits which allow a city broad discretion in the decision-making process) to regulate large family day care homes. Instead, State law allows each jurisdiction three options in dealing with large family day care homes:
 1. To permit large family day care homes by right (no zoning permits required).
 2. To regulate large family day care homes through a non-discretionary (ministerial) permit. This permit is issued by the zoning administrator or designated planning staff member without a public hearing. The permit must be issued if the proposed use meets specific standards set forth in the city's or County's zoning ordinance (See below).
 3. To regulate large family day care homes through a limited administrative use permit process. This permit is issued by the zoning administrator or other designated planning staff member; however, neighbors within 100 feet of the proposed family day care home must be noticed as to the application no less than 10 days prior to the date on which the decision will be made. No hearing on the application will be held unless the applicant or other affected person requests a hearing. Again, the permit must be issued if the proposed use meets specific standards set forth in the city's or County's ordinance (See Appendix B).



- A jurisdiction that is implementing a non-discretionary permit or administrative use permit process may address only four issues in its ordinance: parking, traffic control, noise, and spacing and concentration.
- The Jurisdiction's ordinance must set forth specific standards in each of these areas, and permits must be granted if the applicant meets these standards. Any regulation of family day care homes beyond these four areas is in conflict with State law.

Child Care Centers:

State law does not pre-empt local zoning ordinances in regard to child care centers. Local jurisdictions may use traditional zoning powers to regulate the location and operation of child care centers. However, to encourage the development of child care facilities, jurisdictions should exercise discretion in the application of those powers. Chapter 5 describes strategies that a jurisdiction may use to deal with specific land use issues that may impact child care. Chapter 5 also contains additional information for jurisdictions that choose to regulate large family day care homes. Relevant State law is contained in Appendix A.

Note: Child care centers are classified as "E" occupancies in the Uniform Building Code.

State Resources

For more information regarding State licensing, contact:

Community Care Licensing

Child Care Advocate

Central Coast Regional Office

Dept. of Social Services - State of California

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Santa Barbara, CA 93105

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