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Agenda Item: ID17-790 (2:00 P.M.)

Date: 6/8/17

2017 JUN 7 PM 4:15

## FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



### Supplemental Information Packet

Agenda Related Item(s) – ID17-790

**Contents of Supplement: Letter of Support  
Item(s)**

Consider Plan Amendment Application No. A-17-004, Rezone Application No. R-17-006, Development Code Text Amendment Application No. TA-17-004 and related environmental finding filed by the Development and Resource Management Department Director pertaining to 174.6 acres of property as follows: (Citywide)

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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2017 JUN 7 PM 3 59

FW: Support letter for text amendments to zoning ordinance for family child care providers

**Attachments:** CITY CLERK, FRESNO CA Letter to Fresno City Council Re Text Amendments Zoning Ordinance FCCH FINAL 06.07.17.pdf

Please send this out as a supplement. It has been ok'd by the Council President.

**From:** Laurie Furstenfeld - Child Care Law Center [mailto:lfurstenfeld@childcarelaw.org]

**Sent:** Wednesday, June 07, 2017 3:25 PM

**To:** Esmeralda Soria; Steve Brandau; Oliver Baines; Paul Caprioglio; Luis Chavez; Garry Bredefeld; Bruce Rudd; Mary Raterman-Doidge; Douglas Sloan; Yvonne Spence; Yahaira Figueroa; District1; District2; District3; District4; District5; District6; Clinton Olivier

**Cc:** Bonique Emerson; Mirna Len

**Subject:** Support letter for text amendments to zoning ordinance for family child care providers

Dear Council President Olivier and Councilmembers,

Please accept Child Care Law Center's letter of support for text amendments to sections 15-1202 and 15-2725 of the Citywide Development Code, which will be heard in tomorrow's hearing at 2pm. Should you have any questions, please do not hesitate to contact me.

Best regards,  
Laurie Furstenfeld



**Laurie Furstenfeld**

Staff Attorney, Child Care Law Center

415-558-8005 x3

[www.childcarelaw.org](http://www.childcarelaw.org)

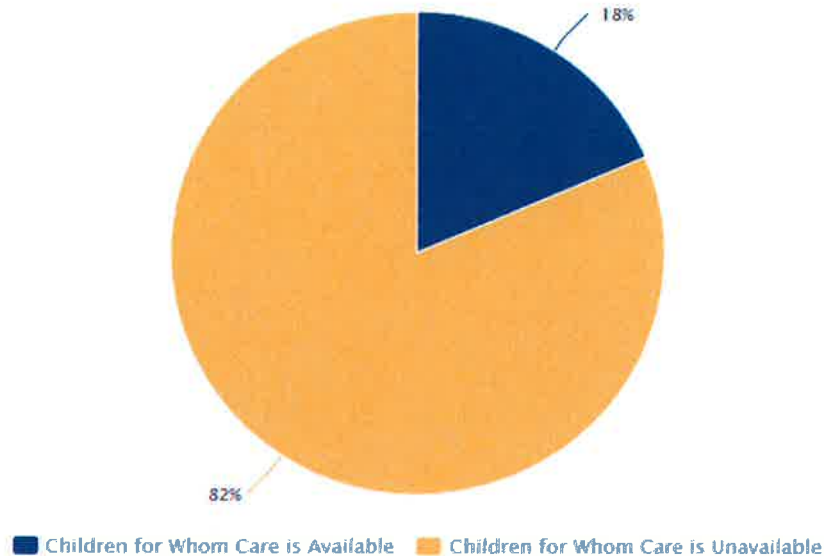
445 Church St. 4th Floor | San Francisco, CA 94114



## Fresno County Child Care Availability

**There is only enough licensed child care in Fresno County for 18% of young children with working parents**

Fresno County



### **Fresno County lost 42% of its Family Child Care Homes since 2004**

Fresno County	Number			Percentage decrease in family child care homes from 2004 to 2014 (10 years)
	2004	2008	2014	
Family Child Care Homes	1,087	959	634	42% ↓

### **Fresno County lost 37% of its Family Child Care Home Spaces since 2004**

County	Number of FCCH Slots			Percentage decrease in family child care spaces from 2004 to 2014 (10 years)
	2004	2008	2014	
Fresno County	9,644	8,818	6,098	37% ↓

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i. Data Source: California Child Care Resource & Referral Network, California Child Care Portfolio (Nov. 2015), *available* at [http://www.rrnetwork.org/2015\\_portfolio](http://www.rrnetwork.org/2015_portfolio). For data and charts, see Lucille Packard Foundation for Children's Health, Kidsdata.org (2016), *available* at <http://www.kidsdata.org/>.



# CHILD CARE LAW CENTER

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June 7, 2017

*Via U.S. First-Class Mail and Email*

Clint Olivier  
Council President District 7  
2600 Fresno Street  
Room 2097  
Fresno, CA 93721

*Email: [clinton.olivier@fresno.gov](mailto:clinton.olivier@fresno.gov)*

Dear Council President Olivier and Councilmembers,

The Child Care Law Center (CCLC) uses legal expertise to help families secure high-quality, affordable child care, particularly for low-income and underserved communities. We believe that all children have the right to safe and nurturing care while their parents work. California family child care zoning law is one of our practice specialties.

Below we offer our support for proposed amendments to Citywide Development Code §§ 15-1202 & 15-2725. We also urge the City to exempt family child care providers from the seven-year expiration date for conditional use permits. Lastly, while we support the amendments before you, we urge the City to consider other options under state law which allow the City to not require a zoning permit for large family child care providers or require a zoning permit without a hearing. Requiring no permit or a less restrictive permit would increase the availability of family child care in the City of Fresno.

**I. CCLC Strongly Supports the Amendments to Sections 15-2725 in the “Clean Up Text Amendment, May 2017”**

CCLC commends the City of Fresno (“the City”) Development and Resource Management Department (“the Department”) for incorporating feedback from the Central Valley Children’s Services Network and Child Care Law Center into the proposed text amendments to Citywide Development Code §§ 15-1202 & 15-2725. The proposed amendments to the ordinance before you and the zoning permit forms will bring the City into compliance with the California Child Day Care Facilities Act, Cal. Health & Safety Code §§ 1596.70 et seq. (“the Act”), which preempts local city and county law. While the City has the option of not requiring a zoning permit or a less restrictive zoning permit (discussed below), we are very pleased with and support the amendments in the “Clean Up Text Amendment, May 2017.”

**II. CCLC Strongly Supports the Additional Amendments Regarding the Conditional Use Permit and Parking Requirements Added Before the Record, Provided the Amendments are Consistent With Our Offered Language**

We also suggested two additional very important amendments to section 15-2725 that are *not* in the “Clean Up Text Amendment, May 2017.” Bonique Emerson from the Department told us that the amendments would “be added to the record prior to the meeting,” but as of June 6, 2017 at 2pm, we have not received this language.<sup>1</sup> Our first suggestion was for the City to clarify which kind of “Discretionary Permit” child care providers are required to obtain. We also noted that some of the Conditional Use Permit (“CUP”) requirements are inapplicable to family child care homes because they are inconsistent with the state law. As currently drafted, the ordinance allows the Department to apply CUP requirements that are inconsistent with state law to large family child care providers. We suggested adding language such as, “All large family child care providers are required to obtain a Conditional Use Permit, as provided for in section 15-5301 et seq. Requirements for the Conditional Use Permit shall not exceed conditions outlined in this section 15-2725.” We also suggested including this language and/or cross referencing to the CUP ordinance section as well. This added language will help ensure that child care providers know which permit requirements they are subject to, and that all planning department staff know these requirements, especially when new staff come to work for the Department and are unfamiliar with the state law pertaining to large family child care homes.

Our second suggestion was to insert the parking requirements and/or cross-reference to the parking requirements for large family child care providers. While it may be obvious to the Department and attorneys where other large family child care requirements are located, such as the parking requirements, family child care providers unfamiliar with the ordinance likely will not know all the requirements that apply to them. It would be helpful to include language such as, “Section 15-2409 contains the parking requirements pertaining to this section.” Cross referencing to other sections of the code that apply to large family child care homes, in addition to parking, would also be helpful.

### **III. CCLC Strongly Urges the City to Exempt Family Child Care Providers from the “Expiration of Seven Years” Requirement**

We strongly urge the City to exempt family child care providers from section 15-5308, which gives the zoning permit an expiration date of seven years. Section 15-5308(b) already provides for exemptions in some cases. Through individual representation of a large family child care provider in Fresno, we just recently became aware of this requirement. The expiration date is nonsensical for large family child care providers because the zoning permit they acquire is not for structural changes to the property and the state Child Care Licensing Division conduct ongoing Health and Safety inspections of family child care homes in order for the providers to maintain their child care license. We have not yet seen a zoning permit for family child care providers in other cities that expires. Requiring family child care providers to undergo and pay for the zoning process every seven years is also burdensome and contrary to the intent of state law to increase the availability of child care and restrict local regulation of family child care. See Cal. Health & Safety Code § 1597.30 et. seq.

### **IV. The City Also Has the Option of Not Requiring a Zoning Permit for Family Child Care Providers**

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<sup>1</sup> Email exchange between Bonique Emerson (City of Fresno), Mary Raterman-Doidge (City of Fresno) and Laurie Furstenfeld (Child Care Law Center). Email on file with author. April 12, 2017 – June 7, 2017.

Notwithstanding our support for the proposed amendments before you, the City could obviate the need for large family child care providers to obtain a land use permit and classify the homes as a residential use of property. Cal. Health & Safety Code § 1597.46(a)(1). Eliminating the current zoning administrator use permit would be a tremendous relief for both child care providers and parents. The current cost of \$455 or \$909, depending on where the child care provider resides, for the Special Use Conditional Use Permit is a huge expense for family child care providers, who make on average \$26,000 per year and typically clock over 60 hours/week.<sup>2</sup> Because California Licensing requirements allow large family child care homes to only care for up to 14 children, family child care providers cannot care for more children to cover any additional expenses. Child care providers are therefore usually forced to pass extra costs onto parents who are already paying on average between \$600 to \$1,000/month per child for child care.<sup>3</sup> In addition to the rising cost of living, child care providers are now grappling with new costs associated with the increasing state minimum wage of \$10.50/hour, which will increase to \$15/hour within the next few years. While working families welcome a higher pay, child care providers and parents are experiencing ancillary consequences from the recently enacted law that are unique to the child care industry. Many family child care providers surviving on a very tight budget, must now pay their child care assistants a higher wage. Small family child care providers, who care for up to 8 children, report that the increased labor cost is one main reason why they are reluctant to expand their license to a large family child care home to care for more children.

The shortage of child care is also at a crisis level. Fresno County only has enough licensed child care to serve 18% of young children with working parents, and the availability of family child care homes has decreased by over 47% since 2004.<sup>4</sup> The City of Fresno reflects this overall trend; as more parents with young children enter the workforce, demand for child care continues to grow.<sup>5</sup>

Designating large family child care a permitted use of property would also free up much needed time and resources for the planning department. For example, Pittsburg, CA recently voted to eliminate the permit requirement for large family child care providers, because the City considered the condition impractical given the burdensome cost to child care providers, the critical need to increase the availability of child care in the city, and the staff time and cost involved in processing

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<sup>2</sup> Statewide annual median income for child care providers is \$ 26,050. Bureau of Labor Statistics, Occupational Employment and Wages, May 2015, <http://www.bls.gov/oes/current/oes399011.htm>. Number of hours worked per week is reported from family child care providers in Contra Costa County.

<sup>3</sup> The California Child Care Resource & Referral Network, *California Child Care Portfolio* (2015), available at <http://www.rnnetwork.org/california-child-care-portfolio>. The California Child Care Portfolio data is also provided to the Lucile Packard Foundation for Children's Health, *Kidsdata.org* under "Annual Cost of Child care, By Age Group and Type of Facility," available at <http://www.kidsdata.org> (2014).

<sup>4</sup> The California Child Care Resource & Referral Network, *California Child Care Portfolio* (2015), available at <http://www.rnnetwork.org/california-child-care-portfolio>. The California Child Care Portfolio data is also provided to the Lucile Packard Foundation for Children's Health, *Kidsdata.org* under "Potential demand is defined as children with working parents," available at <http://www.kidsdata.org> (2014). The number of children served in Family Child Care settings in Contra Costa county declined from 14,104 in 2004 to 10,092 in 2014. During that same period, the number of family child care homes in Contra Costa fell from 1,463 in 2004 to 990 in 2014. *Id.*

<sup>5</sup> "Contra Costa's population is projected to grow by 16.5% over the next 20 years, totaling upwards of 1.1 million residents in 2020." National Economic & Development Law Center, *The Economic Impact of the Early Care and Education Industry in Contra Costa County 6* (2002), available at <http://www.insightcced.org/uploads/publications/ece/contracounty.pdf>. For annual gross revenues in 2002, see *Id.* note 6, at 45.

the zoning applications.<sup>6</sup> The same reasons for eliminating the zoning permit requirement apply to the City of Fresno.


Should the City forgo eliminating the zoning permit, then we strongly recommend the City instead require an administrative or “over the counter” permit *without* a hearing. When cities grant a right to appeal a zoning decision, some neighbors mistakenly believe they have a right to block final approval of a zoning permit for a child care provider who has complied with all the permit requirements. If the City were to adopt this option, a hearing would no longer be part of the zoning process. *See id.* § 1597.46(a)(2). And by omitting requirements regulated by Licensing, and that do not comply with state law, an administrative use permit would also streamline the process for provider applicants and decrease the time and resources expended in reviewing the zoning permit for large family child care providers. This should allow the cost of the permit to also go down. If Fresno maintains the current zoning requirement with option of a hearing, please note that a “Conditional Use Permit,” gives the impression to neighbors and applicants that the City has discretion in granting the permit. Even if the City requires a hearing, “[t]he use permit must be granted if the large family day care home complies with local ordinances.” Cal. Health & Safety Code § 1597.46(a)(3). This is further reason to stop using the conditional use permit process for family child care providers.

#### **V. Family Child Care Supports Thriving, Economically Sustainable Communities**

Local availability of a mix of child care settings with sufficient capacity to meet demand is key to building vibrant, sustainable communities. Family child care homes enhance the Fresno community by maintaining a home-like setting for young children, and offering parents care during flexible work hours close to where they live and work. Child care simultaneously supports local working families, their children, and contributes to job creation and economic development

In summary, the Child Care Law Center strongly supports the proposed amendments to Citywide Development Code §§ 15-1202 & 15-272 should the City continue to require a zoning permit with a hearing for large family child care providers. While the amendments bring the City into compliance with state law, we urge the City to eliminate the zoning permit for large family child care providers or require a permit without a hearing, also permissible under state law. The Child Care Law Center is happy to continue working with the City to ensure *all* families in Fresno have quality, affordable child care.

Sincerely,



Laurie Furstenfeld  
Child Care Law Center

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<sup>6</sup> On March 6, 2017, the City of Pittsburg adopted amendments to the Pittsburg Municipal Code §§ 18.50.010, 18.53.020, 18.60.030 to consider large family child care a residential use of property. Considering large family child care homes a residential use of property complies with California Health & Safety Code § 1597.46(a)(1) (explaining that cities may “Classify these homes [large family child care homes] as a permitted use of residential property for zoning purposes.”).



cc: Esmeralda Z. Soria, Council Vice President District 1  
Steve Brandau, Councilmember District 2  
Oliver L. Baines, III, Councilmember District 3  
Paul Caprioglio, Councilmember District 4  
Luis Chavez, Councilmember District 5  
Garry Bredefeld, Councilmember District 6  
Bruce Rudd, City Manager  
Mary Raterman-Doidge, Deputy City Attorney  
Douglas T. Sloan, City Attorney  
Yvonne Spence, CMC, City Clerk