

EXHIBIT A

DRAFT CONDITIONS OF APPROVAL P12-0718/5925 West Las Positas Boulevard, Ste. 200 Tri-Valley Academy (TVA) Heritage School

PROJECT SPECIFIC CONDITIONS

Planning Division

1. The proposed Tri-Valley Academy Heritage School shall maintain its heritage school registration with California Department of Education during its operation. Failure to maintain the heritage school registration with California Department of Education may result in this application being reviewed by the Director of Community Development for possible future action by the Planning Commission.
2. The proposed heritage school shall be limited to a maximum of 90 students present at any one time.
3. If additional hours of operation, number of children or staff, or activities beyond what is stated in the applicant's written narrative, dated "Received April 13, 2012," on file with the Planning Division, are desired, prior City review and approval is required. The Director of Community Development may approve the modification or refer the matter to the Planning Commission if judged to be substantial.
4. Should parking or on- or off-site traffic/circulation problems occur during student pick-up times as determined by the Director of Community Development, the applicant shall revise the pick-up schedule to resolve the problem(s) to the satisfaction of the Director of Community Development. If necessary, the Director of Community Development may refer the Conditional Use Permit application to the Planning Commission for review and possible modification.
5. The exterior windows and doors of the school shall remain closed when not being used for ingress/egress purposes.
6. The applicant shall inform all patrons that the facility is located in an industrial district and may be subject to noise, odors, etc.
7. Prior to an individual working and/or providing services at the facility, said persons shall complete and pass a criminal background check. The applicant shall submit a letter to the Planning Division stating that all persons at the facility have satisfied this condition.
8. Prior to an individual working and/or providing services at the facility, the applicant shall require said persons to undergo and pass first-aid and CPR training. The applicant shall ensure that these certifications are current at all

times. The applicant shall submit a letter to the Planning Division stating that all persons at the facility have satisfied this condition.

9. Children 12 years and younger who do not take a TVA Heritage School shuttle van shall be signed in/out of the subject school by a parent and/or legal guardian. Children 12 years and younger who take a TVA Heritage School shuttle van shall be signed in by a school designated staff member and signed out of the subject school by a parent and/or legal guardian.
10. Children 12 years and younger shall be escorted to and from restrooms by school staff.
11. Prior to issuance of a business license, the applicant shall prepare and submit a disaster plan to the Planning Division and shall ensure it is in place for the facility/patrons.
12. All vehicles used by TVA Heritage School to pick up students shall have a TVA Heritage School emblem.
13. All vehicles used by TVA Heritage School to pick up students shall have access to a means of communication so that the driver can be in direct contact with staff at TVA Heritage School when needed and in case of an emergency.
14. Drivers for TVA Heritage School shall have a student roster to verify students' names and grades.
15. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for a grand opening.

STANDARD CONDITIONS

Community Development Department

16. The applicant shall pay an all fees to which the use may be subject to prior to issuance of permits. The type and amount of the fees shall be those in effect at the time the permit is issued.
17. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

Planning Division

18. The proposed use shall be in substantial conformance to Exhibit B, dated "Received April 13, 2012," on file with the Planning Division, except as modified by these conditions. Minor changes to the plans or operation may be allowed subject to the approval of the Director of Community Development.
19. If the operation of this use results in conflicts pertaining to parking, noise, traffic/circulation, or other factors, at the discretion of the Director of Community Development, this Conditional Use Permit may be submitted to the Planning Commission for their subsequent review at a public hearing.
20. This Conditional Use Permit approval will lapse one year from the effective date of approval unless TVA Heritage School receives a business license within that time.
21. TVA Heritage School shall maintain the area surrounding the building in a clean and orderly manner at all times.
22. This approval does not include approval of any signage for TVA Heritage School. If signs are desired, TVA Heritage School shall submit a sign proposal to the City for review and approval prior to sign installation.
23. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.

CODE REQUIREMENTS

Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.

24. All building and/or structural plans must comply with all codes and ordinances in effect before the Building Division will issue permits.
25. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval.
26. Prior to occupancy, the applicant shall contact the Building Division and Fire Marshal to ensure that the proposed use of the subject building meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City permits. {end}



April 17, 2012

Ms. Janice Stern
Planning Manager
City of Pleasanton
200 Bernal Avenue
Pleasanton, CA 94566

Re: Conditional Use Permit
TriValley Academy
Site 36, Amador One

Dear Janice:

This letter is being provided in accordance with the Declaration of Covenants, Conditions and Restrictions for Hacienda, Article III, Section 3.2, Paragraph 3.2.3, Plan Changes and Plans for Changes to Improvements. The Design Review Committee for the Hacienda Owners Association has reviewed the application for a conditional use permit. This application was submitted by TriValley Academy, on behalf of 5925 W. Las Positas, a condominium project, Site 36, dated April 12, 2012. This approval replaces the approval granted in the Association's letter dated November 7, 2008. This modification is in substantial compliance with the guidelines set forth in the Design Guidelines and Covenants, Conditions and Restrictions.

The proposed conditional use permit will allow the TriValley Academy to operate a chinese culture heritage school program to school age children at 5925 W. Las Positas Boulevard, Suite 200 within the Tri-Valley Korean Presbyterian Church. The school will be open Monday through Friday from 9:00 am to 6:30 pm. The school will also be open from 8:30 am to 6:30 pm daily for approximately 12 weeks during summer, winter and spring school breaks. The maximum number of students who would be at the school is 90. In consideration of the conditional use permit, the applicant has reviewed site parameters of concern including: parking, traffic and noise. Based on a comprehensive review of space allocation and business practice, the applicant has demonstrated that their use is compatible with currently approved uses. The description of the use proposal for this modification is attached.

This application is hereby approved by the Hacienda Owners Association and may be processed for necessary approvals by the City of Pleasanton. Please feel free to contact me at the Association's office if I can be of any assistance in this matter.

Sincerely,

James Paxson
General Manager, HBPOA

cc: Amy Mi
Marcy Marks
Myung S. Lee

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EXHIBIT D

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California Department of
EDUCATION[CDE Home](#) » [Learning Support](#) » [Parents/Family & Community](#) » [Heritage Schools](#) » [Heritage School Registration Form](#)

Annual Heritage School Transaction Page

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Transaction Information

Transaction Number	23920121541874074000
Submitted Date and Time	1/2/2012 9:54:18 PM

Heritage School Information

Name of Heritage School	TriValley Academy
Name of the person, firm, association, partnership, or corporation under which this heritage school does business	TriValley Academy, Inc.
Additional name (if any) of the person, firm, association, partnership, or corporation under which this heritage school does business	
County in which heritage school is located	Alameda
Address	5933 Coronado Lane, Suite 101
City	Pleasanton
School Zip Code	94588 -
Type of heritage school	1
Heritage School telephone number	(925) 899-6799
Name of the state or national cultural or language association in which membership is maintained	Chinese School Association in the United States (CSAUS)

Statistical Information

Range of student ages.	Youngest: 10 Years
(Youngest may be no younger than 4 year and 9 months and older no more than 18 years)	
Oldest Student age	Oldest: 18 Years
Enrollment by grade span (Elementary, K-6)	8
Enrollment by grade span (Secondary, 7-12)	12
Enrollment by grade span (Ungraded)	0
Total enrollment	20

Number of teachers

6

Administrative Staff

Director or Principal Officer name Ms. Stephanie Liu

Director or Principal Officer address 4000 Pimlico Drive, Suite 114-268

Director or Principal Officer City Pleasanton

Director or Principal Officer Zip Code 94588

E-mail Address stephanie@trivalleyacademy.com

An additional Director or Principal Officer is optional but if a name is entered; the address, city, and zip code must be entered.

Additional Director or Principal Officer name (optional)

Additional Director or Principal Officer address

Additional Director or Principal Officer City

Additional Director or Principal Officer Zip Code

Additional E-mail Address (optional)

Acknowledgements and Statutory Notices

By completing and submitting your Heritage School Registration Form, the filer has indicated that he/she has read and understands each statement and each referenced EC section, below, and that this heritage school is in compliance.

- All Heritage School Registration Forms are public documents viewable by the public.
- This heritage school maintains true and accurate records of the following at the address stated: i) Courses of study offered. ii) Faculty names, addresses, and the educational qualifications of each faculty member.
- Criminal record summary information has been obtained pursuant to EC Section 44237.
- The Heritage School Registration Form is not a license or authorization to operate a heritage school.
- Filing of the Heritage School Registration Form shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent by any means whatsoever, that the State of California, the Superintendent of Public Instruction, the State Board of Education, the CDE, or any division or bureau of the Department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course unless this is an actual fact (see EC Section 33195).
- Heritage school officials are responsible for initiating contact with the appropriate local authorities (e.g., city and/or county) regarding compliance with ordinances governing health, safety and fire standards, business licensing, and zoning requirements applicable to heritage schools.
- This heritage school will retain a copy of this document and record of payment to the CDE.
- A person, firm, association, partnership, or corporation offering or conducting heritage school instruction shall not employ a person who would be prohibited from employment by a public school district pursuant to any provision of EC Section 33195 because of his or her conviction for any crime [see EC Section 33195.1(a)(1)].
- The Heritage School Registration process is not complete until the required payment has been received by the CDE for the Heritage Enrichment Resource Fund.
- Filing of the Heritage School Registration Form does not grant a heritage school any right to receive state funding [see EC Section 33195(d)].
- In the case of any heritage school where an instructor also serves as the administrator of the school, the heritage school shall make the electronic registration form available upon request to the parents or guardians of all pupils currently enrolled in the school and to any parent or guardian considering whether to enroll his or her child [see EC Section 33195.1(b)].
- The heritage school will ensure that criminal record summary information for the employees of any entity that has a contract with the heritage school has been obtained through a manner authorized by the Department of Justice (DOJ) and used appropriately, pursuant to EC Section 33195.2(a) through (i).
- A heritage school contract with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where contract employees will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more specific methods, consistent with EC Section 33195.3(a) through (c).
- Filing the electronic Heritage School Registration Form with the California Department of Education is required annually between January 1 and 31, and must be accompanied by a fee, as determined by the Superintendent of Public Instruction [see ED 33195.5].
- The director and staff of this heritage school are in compliance with all health, safety, and parent notification requirements [see EC Section 33195.6(a) through (f)].

Electronic Signature

By submitting this form and the electronic signature, the filer of this Heritage School Registration Form has declared under penalty of perjury and the laws of the State of California that he/she is the owner or other head of the school, and the information contained herein is true, accurate, and complete.

The filer also acknowledged compliance with the following:

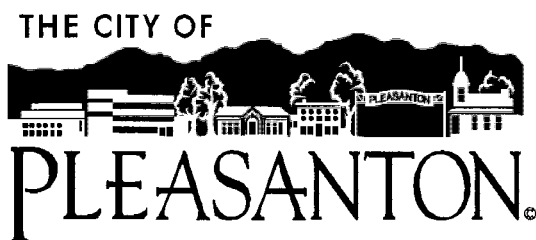
A person, firm, association, partnership, or corporation offering or conducting heritage school instruction shall not employ a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

Name of owner or head of this heritage school	Stephanie Liu
Electronic signature - Birth Month	***** Not displayed for security purposes.
Electronic signature - Birthday	***** Not displayed for security purposes.
Electronic signature - Question	***** Not displayed for security purposes.
Electronic signature - Answer	***** Not displayed for security purposes.

Questions: Heritage Schools | heritageschools@cde.ca.gov | 916-445-7331

California Department of Education
1430 N Street
Sacramento, CA 95814

[Web Policy](#)



**Planning Commission
Staff Report**

December 10, 2008
Item 6.a.

SUBJECT: PCUP-224

APPLICANT: Korean Presbyterian Church of Tri-Valley and
Little Ivy League/Jennifer Zheng

PROPERTY OWNER: Korean Presbyterian Church of Tri-Valley

PURPOSE: Application for a conditional use permit to operate a tutorial school
with a maximum of 90 students within an existing building.

GENERAL PLAN: Business Park (Industrial / Commercial and Office)

ZONING: PUD-I/C-O (Planned Unit Development – Industrial/Commercial -
Office) District

LOCATION: 5925 West Las Positas Blvd, Suite 200

ATTACHMENTS:

1. Location and Notification Map
2. Exhibit A -- Site Plan, Floor Plan, Elevations, Written
Narrative and Activities Schedule
3. Exhibit B -- Draft Conditions of Approval
4. Exhibit C -- Letter from State Licensing
5. Exhibit D -- Public Comments

BACKGROUND

In September 2006, the Planning Commission approved Case No. PCUP-179, allowing the Korean Presbyterian Church to operate a church and other ancillary programs in an existing building located at 5925 West Las Positas Boulevard, Suite 200. The Korean Presbyterian Church occupies one half of the building, which is approximately 21,329 square feet of the building area. The church facility includes eight classrooms for a children's Sunday school program.

Little Ivy League, an after-school tutorial facility (Case No. PCUP-138), wishes to relocate to 5925 West Las Positas Boulevard and share the facility with the Korean Presbyterian Church. It will use the classrooms when the Sunday school is not in session.

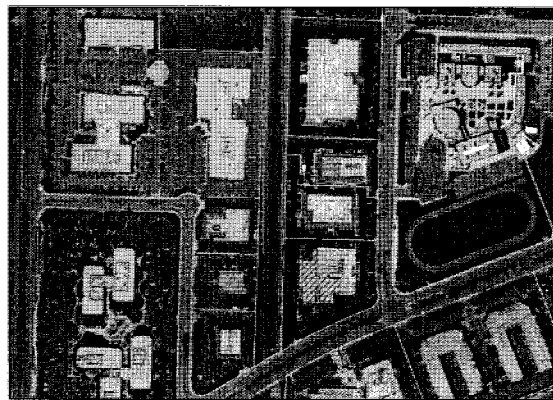
The subject site is located within Hacienda Business Park and is zoned PUD-I/C-O (Planned Unit Development – Industrial/Commercial –Office) District. As stated in the PUD development plan, the uses allowed on the subject site are those that are permitted and conditionally permitted uses in the Special Purposes (I-P) District. Schools are a conditionally permitted use.

The Korean Presbyterian Church does not have this use as a part of its conditional use permit; therefore, a separate conditional use permit is being requested to accommodate the relocation and to operate at the Korean Presbyterian Church site.

The Planning Commission considers and takes action on conditional use permits.

SITE DESCRIPTION

The subject site is a 3.44-acre parcel located on the north side of West Las Positas Boulevard and the southwest corner of Willow Road. The existing single-story building is approximately 45,525 square-feet and is occupied by two tenants -- the Korean Presbyterian Church and Direct Buy. The existing building was subdivided into two condos in November of 2005. Each tenant currently uses approximately one-half of the building area. As there are no common hallways in the building that would provide interior access between the two tenant suites, each tenant has its independent entrance/exit.



Site Location

The subject site borders Hart Middle School to the east, across Willow Road, Agilent Technologies and Hewlett Packard Invent to the north, the Chabot Canal to the west, and professional / commercial / industrial service offices to the south, across from West Las Positas.

The building is encompassed by the shared parking lot, with a total of 173 parking spaces; six of those being handicap parking spaces. Access to and from the site is from West Las Positas or Willow Road.

The nearest residential properties are located approximately 900 feet south of West Las Positas Boulevard.

PROJECT DESCRIPTION

Little Ivy League (LIL)¹ is an existing tutorial school that provides academic enrichment classes to school-age children. The facility would like to relocate its operation to the Korean Presbyterian Church site. While LIL focuses its programs on students in K-8 grades, it also offers art and cultural programs to adults in the morning when the students are in school. LIL proposes to operate from 9:00 a.m. to 6:30 p.m., Monday through Friday. During school breaks, the facility would operate from 8:00 a.m. to 6:30 p.m. Monday through Friday.

LIL would utilize the church's Sunday school classrooms to conduct its programs. It would pickup up students from local schools when school/class is dismissed. Students would then be picked up by their parents later. LIL will implement a parent sign-out procedure so that LIL staff won't release any student to unauthorized person(s).

LIL provides a variety of tutorial program emphasizing Chinese cultural art, English language and math. The details of the programs are noted below:

Chinese Language Art and Culture Program: This program incorporates interactive teaching/ learning tools, to teach students, both school-aged and adult, Chinese language and art. This is a core program of LIL.

English Reading Program: This program includes three areas – Accelerated Reading, Fluent Reading, and Writing/Language Arts.

Accelerated Reading: This is a Guided Independent Reading program that allows the students to choose a library book and take a series of comprehension exercises. The tutoring program would then be crafted based on individual student's needs.

Fluent Reading: This is an instructor-directed reading program that teaches the students advanced comprehension skills.

Writing/Language Arts Program: This program is designed to reinforce and enhance students' writing skills in the areas of creative writing, report writing, and standardized test preparation.

¹ It is referred as "Yang Fan Academy" in Chinese.

Math Program: The program includes Accelerated Math and Reasoning Math. Accelerated Math is a computer based math program that helps students to get familiar and master the math levels taught at school. Reasoning Math teaches and improves cognitive, logical and critical thinking skills in solving problems.

There would be a maximum of 90 students and 10 teachers on site at one time. Students will attend multiple programs.

Please refer to the written narratives and floor plan for detailed facility layout.

ANALYSIS

Conditional uses are uses that, by their nature, require individual review to ensure that impacts associated with their use will be minimal. Conditional use permits may be subject to appropriate conditions to ensure that any potential adverse impacts associated with the use will be mitigated. The following is staff's analysis of the proposed church and its impacts, if any.

Land Use

The subject site is located in the IPD (Industrial Park) District of the Hacienda Business Park. In April 1995, the City Council approved a minor modification (Case No. PUD-81-30-30M/PUD-85-08-12M) to the approved Planned Unit Development plans (Case No. PUD-81-30/PUD-85-008) for Hacienda Business Park to conditionally permit private schools on sties within the IPD District in the business park. Private schools include trade, business, tutorial schools, etc. The applicant has applied for a conditional use permit, as required by the Hacienda Business Park. The proposed tutorial school would be consistent with the applicable land use regulations.

One of the primary concerns in reviewing a conditional use permit is the effect of the proposed use on the surrounding uses. As previously mentioned, Little Ivy League would be sharing the tenant space with the Korean Presbyterian Church who co-occupies the building with Direct Buy. Other uses in the southwest portion of Hacienda Business Park include offices, a wholesale establishment, manufacturing and warehousing, and commercial service enterprises, as well as other uses permitted and conditionally permitted in the straight-zoned industrial district. Staff does not expect the proposed use would general adverse impacts onto the surrounding businesses. Additionally, the proposed Little Ivy League would be located entirely indoors. Therefore, staff believes that the location is appropriate in that it meets the applicable code requirements for this zoning district in the Hacienda Business Park.

Staff has included the standard condition of approval that will ensure that the surrounding uses are not impacted due to noise, parking, traffic, or other objectionable influences. Therefore, from a land use perspective, staff finds the use to be acceptable on the subject property, as conditioned.

Noise

The proposed use would be operated entirely indoors. The applicant has indicated that noise levels should be minimal since the business provides indoor course instruction and doesn't include indoor or outdoor play. The 10:1 teacher to student ratio should also allow the teachers to control the noise levels of students.

The subject site is in an industrial area, and a certain amount of noise is expected. For industrial properties, such as the subject property, the Pleasanton Municipal Code states:

No person shall produce or allow to be produced by any machine, animal, device, or combination of the same, on industrial property, a noise level in excess of seventy-five (75) dBA at any point outside of the property plane.

Based on the applicant's description of the classroom instruction and the separation of the proposed suites from the adjacent residences, staff believes that it is unlikely that the noise generated during class instruction would impact tenants. Recommended conditions of approval require that the exterior doors remain closed when not being used for ingress/egress purposes and that the applicant inform all students not to loiter or make loud noises outside the building before or after classes. Alternatively, the surrounding uses may be noisy to the tutorial school. Staff has included a condition that the applicant should inform patrons that the location is in an industrial district and is subject to such noise, odors, etc.

Parking

There are 179-shared parking spaces within the subject parcel site; with six of those being handicapped parking spaces. Based on the subject buildings floor area (45,525 square-feet) and the number of parking spaces provided on-site (173 spaces not included handicapped) the parking ratio at the subject site is one space for every 263 square-feet of floor area. With the proposed church occupying approximately 21,329 square-feet of floor area, the church would theoretically be allocated 81 parking spaces.

The Municipal Code requires that school provide one parking space for each employee and one space for each four students in grade 10 or above. The proposed facility would have 10 teachers and the program focuses on students in grades K-8; therefore, parking during business hours would be for staff and visitors, and for parents during pickup time.

Staff notes that the Municipal Code parking requirement does not address parking demand during drop-off/pick-up times, which would be the most impacted time for tutorial schools from a parking standpoint. Based on current operations and experience, the applicant projects that the peak pickup time would occur between the hours of 5:00-6:00 p.m. when approximately 40% of the students would be picked up. During that time, approximately 35 parking spaces would be occupied by parents in addition to the 10 spaces by the staff. With a total of 45 parking spaces in demand at the afternoon peak hour, staff believes that the allocated 81 parking spaces could adequately handle the needs.

The adult programs in the morning are “filler” programs to fully utilize the available classrooms. Parking demand from the adult programs should not exceed the allocated parking for the facility. However, should parking problems occur in the future, staff has included a “standard” condition of approval that allows the Director of Community Development to refer the use permit back to the Planning Commission for possible mitigation measures.

Traffic/Circulation

The subject building was constructed in 1983 as an office/warehouse building. At that time, the traffic volume as calculated based on the office/warehouse use.

While the proposed tutorial school would not generate additional traffic during the morning peak hours, it may add additional traffic volume to the afternoon peak period.

The City Traffic Engineer has reviewed the scope of the proposed tutorial school in comparison to the existing church use and the previous office/warehouse use. Based on the ITE Trip Generation Manual, the trip rate for a school is six times higher than the office use. As such the applicant will be required to pay for a fee to mitigate the additional trip volume during the PM peak hour prior to operation.

State Licensing

According to the State Community Care Licensing Division, the applicant’s use is exempt from the requirement to obtain State licensing. Per the policy section of 101158 of Title 22, the licensing exemption requires that school-aged children (children over the age of four years and nine months) do not attend sessions that total 16 hours or more per week for each child and are 12 weeks or less in duration (although children may be enrolled in back-to-back sessions as long as they are re-enrolled at the end of a 12 week session). Furthermore, the sessions for school-age children cannot occur during normal school hours. The applicant intends to stay within these parameters to remain exempt from obtaining State licensing. A copy of the State exemption letter is attached as Exhibit C.

Signage

No signage currently exists for the tenant suite. If the applicant wishes to add signage, the proposal would be processed through the standard City procedures for sign design review.

PUBLIC NOTICE

Notice of this application was sent to all property owners and occupants within 1,000 feet of the subject property.

Staff has received emails from parents whose children are currently enrolled at Little Ivy League. They indicated their support for the proposed application.

HACIENDA BUSINESS PARK ASSOCIATION

James Paxson, General Manager of HBPA, has reviewed the application for the proposed use and found that it is in substantial compliance with Hacienda's guidelines set forth in the CC&R's. Based on the review of the space allocation and business practice, the association believes that the uses parking, traffic, and noise impacts are compatible with current approved uses within the subject area and, thereby, approved the proposed use.

FINDINGS

The Planning Commission needs to make the following findings prior to granting the conditional use permit for the proposed church:

- 1. The proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

Objectives of the zoning ordinance include: fostering a harmonious, convenient, workable relationship among land uses; protecting existing land use from inharmonious influences and harmful intrusions; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole.

The subject site is zoned PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District, and it is located in the Hacienda Business Park, where a mix of office, laboratories, light manufacturing, wholesale, and commercial/personal service uses surrounds it. Based on the proposal, the tutorial school will operate entirely indoors, and its student/teacher ratio at 10:1 would help the teacher to control classroom noise. Staff does not feel that the proposed tutorial school would be disruptive to the neighboring businesses/tenants. As conditioned, staff feels that the

proposed church would be compatible with the surrounding neighborhood and that it would complement the area.

Staff believes that this finding can be made.

2. **The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

Staff believes that the use, as conditioned, would not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. The subject site has adequate parking to support the proposed use. In addition, the applicant is required to pay for fees to mitigate additional traffic it would generate during PM traffic peak period. The proposed tutorial school hours would not be in conflict with those of the Korean Presbyterian Church. Adequate and safe ingress and egress into and out of the site is provided. As such, staff does not believe that the proposed tutorial school would be disruptive or detrimentally impact surrounding uses.

Therefore, as conditioned, this finding can be made.

3. **The proposed conditional use will comply with each of the applicable provisions of the Zoning Ordinance.**

The PUD development plan and the Pleasanton Municipal Code conditionally permit the establishment of a private/tutorial school within existing structures. Chapter 18.124 of the Municipal Code (Conditional Uses) states that, because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties. Granting a conditional use permit would be consistent with the City's ability to regulate related zoning regulations. The proposed tutorial school, with conditions of approval, can integrate the church without detrimentally affecting the surrounding properties or the City in general and therefore the third finding can be made.

ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Section 15301 Class 1. Therefore, no environmental document accompanies this report.

CONCLUSION

Staff believes that the required use permit findings for the proposed tutorial school can be met if the project is approved as conditioned. Conditions of approval have been included which will ensure that the safety and general welfare of the surrounding area is maintained. Staff is of the opinion that the proposed tutorial school would be beneficial to the existing businesses and tenants in the Hacienda Business Park as well as to provide a unique service to the community.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve Case PCUP-224 by taking the following actions:

1. Make the required conditional use permit findings as listed in the staff report; and,
2. Approve Case PCUP-224 subject to the conditions listed in Exhibit B.

Staff Planner: Jenny Soo, Associate Planner, 925.931.5615, or email: jsoo@ci.pleasanton.ca.us

PCUP-224, Little Ivy League School

Application for a conditional use permit to operate a tutorial school with a maximum of 90 students located at 5925 West Las Positas Boulevard, Suite 200. Zoning for the property is PUD-I/C-O (Planned Unit Development-Industrial/Commercial-Office) District.

Ms. Jenny Soo presented the staff report and described the scope, layout, and key elements of the project.

Commissioner Fox referred to an e-mail from staff, dated December 10, 2008, with additional attached e-mails included in the packet and that refer to a facility at 4455 Stoneridge Drive. She inquired what the relation of the facility was to the facility under consideration. Ms. Soo replied that Little Ivy League is currently located at 4455 Stoneridge Drive and that the applicant wishes to relocate to 5925 Las Positas Boulevard.

Commissioner Fox referred to the State's letter of exemption and noted that it does not indicate whether the exemption is for an academic school, classroom, or private recreational facility and under what statute the exemption was being granted.

Ms. Soo clarified that the exemption restricts the facility from operating for more than 16 hours; the children cannot enroll in more than one, 12-week session and, therefore, they must re-enroll in the program every 12 weeks. She noted that the applicant agrees with the exemption requirement and will abide by it.

Commissioner Fox inquired whether or not the exemption was actually for the classification of a classroom or for private recreation use. Ms. Decker replied that, as noted in Section 101158 of Title 22, this is the same exemption that is used for both recreational and tutoring centers. She explained that there are two conditions under which a program can operate for less than 16 hours and that what the Commission typically has engaged in is a discussion of a limitation of 16 hours per child per facility to meet the exemption. She continued that the same exemption allows a child to attend more than 15 hours per week that is not longer than 12 weeks in duration, which is treated as a back-to-back enrollment. She added that each project is considered on a case-by-case basis and that this project was evaluated based on the assessment and evaluation of Ms. Suzanne Bothwell of Community Care Licensing Office. She noted that the applicant will be able to operate within these constraints, primarily the second portion of it being that the program is greater than 15 hours per week and that the applicant is not desirous of limiting the attendance of children to 16 hours per week.

Chair Blank inquired if there is a re-enrollment process or paper trail such that the student receives a completion certificate and paperwork at the end of each session that goes on for 12 weeks to show that the student is not continuing in the program for 52 weeks. Ms. Decker replied that this particular program would be monitored by the State and the City has not been engaged in the process of looking at re-enrollment for 12-week back-to-back sessions.

Commissioner Pearce noted that it appears that the exemption encompasses everyone and inquired if there ever is a childcare facility for school-age children that would require a license. She further inquired what the purpose of an exemption might be if the children can be in programs for 20 hours per week and re-enroll in the same programs all year.

Ms. Decker replied that the State acknowledges that these sessions can be back-to-back and that students can re-enroll in the same programs. She noted that the State has a monitoring process that the City has not been engaged in. She stated that the Planning Commission has had various discussions regarding this and has expressed a certain discomfort in the titling of an exemption for continuous engagement in these programs with back-to-back enrollment, and whether or not such facilities are still considered a tutoring center or a childcare facility. She indicated that with respect to this application, staff has evaluated this particular program and believes that it meets the exemption that the State has provided.

Commissioner Fox requested staff to provide an actual printout of Title 22, Section 10158 in order that the Commission may see its exact wording. She noted there was no outdoor area for children, stating childcare facility regulations are 35 feet per child in indoor areas and 75 feet per child in outdoor areas. She also questioned the number of maximum children on site at one time versus the number of the total enrolled in the program and inquired how this works out with crowding and adequate space issues. Ms. Soo replied that there would be a maximum of 90 children in 8,000 square feet of classroom and other areas.

Commissioner Fox inquired what the building occupancy type was for the proposed use and if it was required to be an E occupancy type since it is an academic program. She further inquired what the maximum occupancy load for the building was.

Ms. Decker replied that the building has a B occupancy and that the use is considered a tutoring center and not a childcare facility or a school, which would require an E occupancy. She stated that various discussions have occurred in terms of occupancy and how it would change; however, the use would continue to be maintained as B occupancy if no other changes were made.

Commissioner Fox stated that a B occupancy allows training and skilled development outside an academic school program, but since this has several categories, including an academic enrichment program, it should also have an E occupancy. She noted that one category states: "education or academic program for children between K-12th grade." She inquired how this could be a B occupancy when it is a tutoring school and an academic enrichment center.

Ms. Decker replied that the reason it complies with the B occupancy is because the actual tutoring and the program offered is outside of the State curriculum. She explained that the private school or E occupancy is specifically related to education of

the State curriculum program. She noted that the classes offered in the proposed facility are to enhance those skills not specific to meeting a State requirement or accreditation for elementary education criteria.

In response to Chair Blank's inquiry regarding what the building's occupancy was at present, Ms. Decker replied that it is an office building under a B occupancy.

In response to Commissioner Fox's inquiry if the building was currently fire-sprinklered, Ms. Decker replied that she was not certain but that this could be determined.

In response to Commissioner Fox's further inquiry if the children are picked up from school and transported to the facility, Ms. Soo replied that they were.

Commissioner Pearce inquired if a tutoring facility was not necessarily related to State-accredited standard facilities. Ms. Decker replied that there is a specific difference in that the tutoring facilities and centers engage in a process to enhance and provide better skill sets for children, but they do not teach and are not designed to teach the core fundamental criteria outlined by the State. She added that in this regard, this particular use falls under the B occupancy for training, skills, and learning, whereas a State curriculum-required facility would be an E occupancy. She pointed out that this particular tutoring program is specific to a niche that serves a certain population.

Commissioner Pearce noted that the school was engaged in activities such as helping children meet math standards or STAR testing results and standards and inquired whether it would truly be classified as an academic setting. Ms. Decker replied that it would still be a tutoring center because the threshold is not based on the State curriculum.

Commissioner Fox inquired if it is specifically stated in the California Building Code that E occupancy requires that there be a California Department of Education- mandated curriculum and if this could be also obtained along with the Title 22 citation. Ms. Decker replied that the Code does not state this but that the most recently adopted Code added a new classification in terms of a B occupancy that specifically states training and skills facilities, under which this particular use falls.

Commissioner Fox noted that this use appears to be a classroom environment where the ratio is not one tutor to one student. She stated that she believed tutoring would be for a small or high ratio of teacher to child. Ms. Decker replied that the City does not currently have a definition that identifies the student-instructor ratio. She added that the Commission recently approved a tutoring facility for Amy Cheng, the *MindBridge School*, whose ratios were fairly typical at 1:4 and 1:6. She noted that the ratios for tutoring are not limited to 1:1 and would differ depending upon the enrollment and the complexity of the subjects, such that there may be more demand for one class where there may be six children. She indicated that staff does not look at the ratio and has seen tutoring schools with ratios as high as 1:10, depending upon the subject matter.

Commissioner Fox noted that in public schools, Kindergarten to Third Grade is 20 children per class and inquired why the facility would not then be considered a classroom type of setting. Ms. Decker replied that this is based upon the type of topic presented, and the topic is not necessarily taught in the State school curriculum venue. She pointed out that the request is for a maximum of 90 children at the site, and while the 8,000-square-foot facility would accommodate a maximum of 90 children, it does not mean that every classroom will be filled with 12 children.

Commissioner Fox inquired whether or not children would be at the facility all day during the summer. Ms. Decker replied that she was not certain but that the hours of operation would be as shown in the narrative and would comply with the exemption.

Commissioner Fox expressed some confusion because she stated that for a lot of tutoring facilities in town, a student is tutored one or two hours per week, and it is not a situation where they are in an environment for 30 hours per week. She noted that at a prior hearing regarding what the distinguishing differences were between a tutoring or gymnastic school and an actual childcare center where the students are being taught academic subjects, staff had responded that it would depend on whether a child is in a certain class schedule for one to two hours per week versus a long period of time per week.

Ms. Decker stated that the Municipal Code does not currently have a definition for tutoring schools as opposed to childcare centers. She added that the Planning Commission has struggled greatly through these discussions and that limitations that have been placed on other projects for 16 hours per week or 1.5 hours per day are related to the Commission's concerns regarding whether or not tutoring centers may be considered as childcare centers. She noted that a condition of approval has been placed on these projects such that there is a clear demarcation between the facility being a tutoring center versus a childcare facility.

Ms. Decker clarified that the request before the Planning Commission this evening takes into account the second section of that particular exemption and noted that the Commission has not been necessarily supportive of the back-to-back registration of 12-week sessions because of the concern that it does not become a childcare facility.

Commissioner Fox said in the past when one of these items went to the City Council, the City Attorney, Michael Roush, had stated there is a difference between the policy manual and what is actually in the statute which he relies on. She noted that the statute does not state 12-week back-to-back sessions, but the Community Care Licensing policy manual does talk about back-to-back sessions. She requested clarification regarding whether the Commission needed to abide by the statute or by the policy manual.

Ms. Seto noted that there are statutes but that what is specifically cited in the exemption letter is from a provision of the California Code of Regulations, a State regulation that, in effect, is like a statute. She added that staff has learned that Alameda County

Community Care Licensing has its own manual and its own internal administrative policies by which the provisions are further interpreted. She noted that staff has been in communication with the Alameda County Counsel's Office to obtain more information about how the California regulations are being interpreted on an administrative level, and the results are still pending.

Commissioner Fox inquired if Title 22 could be printed off and provided tonight for the Commission. Ms. Seto replied that she could go to her office and obtain a copy. She noted that the regulation did include many different exemptions.

Commissioner Fox stated that Exemption 7 is public recreation program for less than 16 hours for a total of 12 weeks, operated by various agencies and not by a city or county agency; Exemption 8 is public and private schools that are run by school districts; Exemption 9 is a school parenting program; Exemption 10 is a child daycare that operates only one day per week for no more than four hours on that one day; and Exemption 12 is the one she had requested earlier today which states: "any program that provides activities for children in an instructional nature in a classroom-like setting and satisfies both of the following: (a) is operated only during periods of the year when students in grades K-12 inclusive are normally not in session with the public school district where the program is located due to regularly scheduled vacations; and (b) offers any number of sessions in the period specified in paragraph (a) that when added together, do not exceed a total of 30 days when only school-aged children are enrolled or 15 days when children younger than school-age are enrolled in the program."

Commissioner Fox stated that Exemption 12 is what sounds to be most like the proposed use because it is a classroom-like setting, but it does not provide the 12-week back-to-back session provision and does not discuss 16 hours or less versus 16 hours or more. She added that she did not understand how the State could produce the letter and cite the statute when nothing in Section 101158 matches what is stated in the letter. She stated that she did not see the statute the State is referring to.

Ms. Seto reiterated that staff was trying to work with the County Counsel's Office to receive information about how that office has administratively decided to interpret these regulations.

Commissioner Fox stated that she was concerned by the fact that she did not see a match in the exemption letter to what is in the actual Code of Regulations. She noted that if the State is citing a California Code of Regulation which does not really exist or which the Commission cannot find, she was not certain how the Commission can or should rely on it. Ms. Seto stated there are many provisions in the same regulation under those same sections that give various agencies the authority to do their own implementation, and this might be the authority under which they are working to apply this.

Chair Blank noted that it also states that the exemption status is based on the Title 22 policy in Health and Safety Code Section 1596.792. Commissioner Fox stated that she believed that Health and Safety Code 1596.792 basically inherits Section 101158. Chair Blank disagreed and stated that according to the staff report, this project was approved as PCUP-179 in September of 2006. He noted that most of the people present were here in 2006 and that it might be useful to pull the conditions of approval that the Commission approved for the conditional use permit.

Commissioner Narum noted that Condition No. 5 of Exhibit B relating to a traffic mitigation fee was somewhat open-ended and requested staff to explain how this is determined and whether there would actually be a fee. Ms. Decker clarified that the project was originally proposed for a different location, and there was concern regarding traffic impacts at that site, although no traffic study was required for the site. She noted that the proposed site is an office building with all traffic fees for office use already paid for at that time of construction. She added that a conditional use permit was then granted to the Korean Church where the actual trip rate is less than the office trip rate. She stated that staff looked at potential impacts regarding a tutoring use and found that as this project moves forward, the trip rate, although not identified by a traffic study, may increase and may trigger a fee over and above the office trip rate. Ms. Decker stated that Peter MacDonald, the applicant's representative, discussed with staff what this fee, if any, might be. She noted that if the traffic engineer should find that no fee is required, no fee would be paid; but if a fee to be assessed, staff would then hold more discussions with the applicant and her representatives. She indicated that the applicant and her representatives have expressed the desire to have a traffic study done to narrow down what the actual net increase might be, based on actual data. She added that they are amenable to the condition as written.

Commissioner Fox inquired if it was possible that the Licensing Office program analyst believes this is a public recreation program operated by a city, county, special district, or school district and this is the reason an exemption letter was issued. Ms. Decker replied that she could not comment on this and that the City relies on the State to evaluate programs based upon the narrative, site plans, and building plans the City sends over to the State Licensing Office. She added that the State Licensing Office is the authority in childcare exemptions and what needs to be licensed or not, and City staff relies on its determination as to what exemption might or might not be applicable. She noted that in this case, the State has indicated that this exemption is appropriate for a request for a conditional use permit.

Commissioner Fox noted that the State's letter appeared identical to what is written under Exemption 7a on page 17, which is clearly under a public recreation program. Chair Blank stated that he believed it was impossible for the Commission to determine the thinking of the analyst who wrote the letter. Ms. Seto reiterated that staff is trying to work with Alameda County to determine what might be any internal regulations that are not reflected in either the statute or regulation that the County uses to evaluate facilities and that staff has not received a response to date.

THE PUBLIC HEARING WAS OPENED.

Jennifer Zheng, Little Ivy League, stated that in 2005 she started the school with an idea for children to attend Chinese School and learn Chinese as well as to reinforce whatever they learn in regular school under the subjects of reading, writing, and math in a structured environment. She noted that the idea flourished, and the school is experiencing phenomenal growth, outgrowing the current facility. She indicated that she was fortunate to find the Korean Presbyterian Church, which has a total of 21,000 square feet. She stated that she has eight classrooms and a state-of-the-art multi-purpose room. She added that they were thrilled to have the new home and that many of the parents who support the facility are present in the audience.

Peter MacDonald, representing the applicant, indicated that they agree with the staff recommendation and conditions of approval. He stated that the school provides an incredibly important service to Chinese families in Pleasanton and that while it is a business that is to be regulated, the parents and children are those who would be affected. He noted that the school promotes a structured academic environment and provides Chinese language and cultural instruction, special tutoring, personal discipline training, and help with the students' homework. He added that the school also provides a safe, adult-supervised environment for school-aged children, particularly for working mothers who have to be at work.

With respect to whether or not a tutoring school will be permitted in Pleasanton, Mr. MacDonald asked the Commission to consider the effect of its decision on the parents of the students. He stated that the church is an ideal facility for the use with a symbiotic relationship that is both efficient and cost-effective, where the school uses it during the weekdays, and the church uses it on the weekends and weeknights. He indicated that it is a modern facility with no tenant improvements required, located in a site that is both convenient and accessible to parent, and has exclusive restrooms, entry controls, backdoor lock, and WiFi. He added that there are no other quality locations available in the City.

Mr. MacDonald stated that the applicant and her husband have worked hard for over a year to find a location acceptable to the City and practical for their use. He indicated that the lease at the current location expires in June and that the applicant was planning to purchase a location in the Hacienda Business Park but it was within 300 feet of a cell tower. He added that private schools are not allowed in residential locations, they do not work in office buildings for a number of reasons, and while they are allowed in shopping centers, they are not the ideal situation. He indicated that if business parks are off limits to tutoring schools, there will never be any practical locations in Pleasanton for the size of the proposed school.

Mr. MacDonald noted that the Hacienda Park Owners Association also supports this use and application. He stated that an anonymous complaint was received suggesting that the school was a daycare facility and not a tutoring school; however, while daycare facilities are not allowed by the Hacienda PUD, tutoring facilities are. He explained that

the primary distinction is that licensed daycares involve children less than four years and nine months, and this is the basis of the letter in the packet from the State exempting the school from licensing requirements. He stated that the proposed facility does not accept children less than four years and nine months of age, and the State made that determination after full disclosure about how the business would operate. He noted that the State fully understands there will be times such as school vacations and summer where children will be at the after-school program for more than 15 hours in the same week, and this is the State's policy to interpret.

Mr. MacDonald stated that the State is willing to process a childcare license for the school at the proposed location if this is required, and the school is also willing to process a childcare license even though it is not required if the City so requires it. He indicated, however, that the State should be left to interpret State regulations, and the City should interpret its zoning code. He added that the school would remain a tutoring school even if the City requires it to obtain a childcare license.

Mr. MacDonald stated that Staff acknowledges that neither daycare, childcare, nor tutoring schools are defined in the Municipal Code, which makes this a policy decision, and the Planning Commission is empowered to interpret the zoning ordinance. He indicated that the Commission's decision should be based upon the primary nature of the land use, the need for rules that best serve the interests of the people of Pleasanton. He, therefore, asked the Commission to determine the school as a tutoring school under the zoning code, an allowed use in the Hacienda Business Park, and to approve the staff recommendation and conditions as written.

Regarding Commissioner Fox's questions, Mr. MacDonald indicated that there are 58 students enrolled but are not there all day. He added that the facility's staff can handle 65 students and that they are applying to handle 90 students at the larger facility. He noted that the Building and Safety Division has always held that these types of tutoring facilities are not educational institutions. He stated that the issue arose to the City Council because someone was renting a 610-square-foot area across the street, and the Building and Safety Division required that a one-hour firewall around the office be installed. He noted that it was later found that this was not required for renting a space within a larger building. He further noted that the proposed building for the facility is very safe and is fire-sprinklered on the first floor.

Commissioner Fox noted that she remembered Mr. MacDonald from a project proposed by Mary Kay Berg. She stated that she thought Mary Kay Berg only had two or three students at one time, and Mr. MacDonald stated that she was actually expanding her use and was hiring more teachers.

Commissioner Fox stated that the Building Code indicates that if a child was in the facility for more than 12 hours a week or more than four hours a day, an E occupancy would be required.

Mr. MacDonald stated that when he brought the issue forward, the City reviewed the proposal and indicated that an E occupancy was intended to apply to schools that are mandated under State curriculum standards and that this was not such a facility.

Commissioner Fox inquired if this application of school standards was in writing and how they relate to the Building Code. Mr. MacDonald suggested that this be discussed with the City's Chief Building Official. He stated that there are many interpretations of codes and that he has already read the materials staff would soon provide. He indicated that he thought the question before the Commission was whether or not the proposal is a tutoring school. He reiterated that he felt the State should be allowed to interpret its own code, the Commission the zoning code, and the Council the Municipal Code.

Commissioner Fox stated that the State Fire Marshal's website talks about assisted egress in case of a fire. She cited the many facilities in town that are licensed, including the daycare facilities at Mohr and Lydiksen Elementary Schools. She noted that it was indicated that the main use of this facility is tutoring for families with working mothers and inquired if this, by definition, was childcare.

Mr. MacDonald replied that every tutoring school and every school is childcare by definition. He stated that the issue at hand is what the State's regulatory requirement is, and the State has made it clear that what it is really interested in and where there is no exemption available is places that have children aged four years and nine months and younger; the State allows for the exemption beyond that. He reiterated that the applicant is willing to apply for a childcare license if the Commission so desires. He inquired, however, if this would then trigger putting in firewalls in the facility. He stated that the applicant has a three-year lease and would then have to rebuild the entire facility to meet a new building code, which they do not want to do. He indicated that the facility should still be recognized as a tutoring school under the zoning code, even if the Commission requires the applicant to obtain a license.

In response to Commissioner Fox's inquiry regarding whether the building was an A3 type for church assembly, Mr. MacDonald suggested that she discuss this matter with the Building and Safety Division, stating that they when the Fire Inspector come out to inspect the building, the applicant inquired if the facility met the requirements for the proposed use, and the Fire Marshal had indicated that the building met the required standards. He added that they are willing to do anything that is within reason.

Commissioner Fox inquired if the building was sprinklered, and Mr. MacDonald confirmed that it was.

Commissioner Fox stated that many letters have been received classifying the facility as an academic school. She inquired if he considered this a tutoring facility or a school. Mr. MacDonald replied that the City's zoning code does not have a definition for a tutoring school, and, therefore, it would mean whatever policymakers make it to mean.

Chair Blank stated that he would like to see the Minutes of the prior approval. He inquired if, other than the number of students increasing from 58 to a maximum of 90, there are any differences between what they are doing with their current operation and their future operation. Ms. Zheng replied that nothing would change.

Mr. MacDonald disclosed that Ms. Zheng had inherited the use permit in that she leased the church after it had obtained a use permit to provide for after-school care.

Commissioner Fox stated that the project description in the old approval stated that the students walked to the facility after school and that there were no vans picking up the students. Ms. Zheng clarified that the previous applicant had staff picking up students and walking to the facility.

Chair Blank referred to the April 27, 2005 approval for Jennifer Zheng, Little Ivy League, and Ms. Zheng stated that they do not walk them to the facility; they now pick up the students in four large commercial vans that are commercially license and insured. She added that the entire facility is covered under commercial insurance.

Ms. Decker clarified that the April 27, 2005 conditional use permit, PCUP-138, was for location at 2340 Santa Rita Road and is not the one the Commission requested. She noted that the Commission requested PCUP-179, the original request for approval that was limited to 2.5 hours per day from 3:30 p.m. to 6:30 p.m. and from 3:30 p.m. to 5:30 p.m. on Friday. She noted that there are some differences between the two conditional use permits but that staff was looking at PCUP-179.

In response to Commissioner Fox's inquiry if this permit did not include all day during the summer months, Ms. Decker confirmed that was correct.

Elizabeth Shackelford, California Credentialed K-8 teacher, stated that over the last two-and-a-half years, she has worked at Little Ivy League teaching writing and phonics classes to students and that this year she has worked with 39 students in private and semi-private classes. She indicated that she felt the school should be considered a tutoring center and not a daycare, stating that each student has a schedule of where he or she is to be at each hour. She noted that the vast majority of classes are academic in nature, students are taught Chinese every day, and many parents sign-up their children for classes that meet once or twice a week. She stated that she works at the facility every afternoon with four or fewer students at a time. She added that many of these students speak English as their second language and receive one-on-one attention that they do not receive at school. She noted that the atmosphere is focused and academically rigorous and that they work to correct problem areas they have. She stated that she believes she has a unique opportunity to teach because it still allows her to stay home with her children during the day. She asked the Commission to approve the facility in its new location.

Vaughn Wolfe stated that he comes through the business park to come to the existing facility and will also come to the new facility assuming the conditional use permit is approved. He indicated that he is an engineer and his wife is from China; her wife's entire family is college-educated. He noted that today's newspaper included an article about competing math scores and that it is important to them that their son receive Mandarin Chinese training and advanced math. He stated that the only place their son will receive advanced math classes is in the GATE program or at Little Ivy League. He noted that China educates more English-speaking engineers than the United States and England put together. He stated that the children need to learn how to speak, read, and write Chinese and do advanced math, and that there is nowhere else they can get it other than at Little Ivy League. He, therefore, requested the Commission to approve the application.

Leon Donn stated that he and his wife work in the South Bay, have two children aged 5 and 8 years who have attended Ivy League for over two years. He indicated that it is important for their children to be able to attend the program when school lets out to be able to increase their education and receive education in Chinese language and culture. He indicated that his older son now speaks fluent Chinese and that they are actually leaving for China tomorrow. With respect to working parents and the assumption that the facility must be a daycare, he begged to differ and indicated that there are many daycare facilities in the area, but they have not found one single program like Little Ivy League for language enrichment and Chinese training. He encouraged the Commission to approve the application.

Gary Kumfert stated that he never had an opportunity to master the German language and was never able to speak with his grandparents. He noted that he married a Chinese immigrant, and his daughter is now able to speak with her grandparents, which is very important to him. He voiced support for the school's growth and education and spoke of his experiences with day care, noting that he was told one day that he could not pick up his daughter in the middle of the session because she was in class, which he felt was great. He asked the Commission to approve the request as it truly serves families and children.

Qizhi Chen stated that he just moved to Pleasanton last December and that he loves the City of Pleasanton. He indicated that his five-year old daughter loves Little Ivy League School and has learned a lot of Chinese there. He stated that he supported approval of the school.

Kevin Yip stated that his wife works in Hacienda Business Park and spoke of his desire for his children to speak and learn Chinese. He noted that he registered them for a weekend Chinese school that they did not like; he then learned about Ivy League School and registered his children there, believing that Chinese needs to be practiced every day. He noted that the school has a variety and quality of classes and teachers, and urged the Commission to approve the request.

Ray Xu stated that the school provides excellent Chinese classes for language and writing for his six-year-old son and that the teachers are well qualified and kind. He added that he believes it would be better to have a larger facility and requested the Commission to approve the request.

Frank Huang stated that Little Ivy League is a very organized school, is family-oriented, and has many good programs. He indicated that he is able to work and have the school pick up his 10-year-old child from school and learn. He added that his son is able to finish his homework and even wants to go to the school on weekends. He stated that he has many friends who are excited about enrolling their children at Ivy League and encouraged the Commission to approve the request.

Larry Lai stated that he moved to Pleasanton because of its schools and that his five-year-old son has been attending Ivy League for about six months. He stated that he believed it is a wonderful Chinese program where his son learned to read about 200 Chinese words. He indicated that he wants his son to be able to speak Mandarin and that he believes the weekend schools do not provide enough Chinese training. He indicated that he felt Ivy League offers a unique program and that the course material is superior in that it incorporates classic Chinese poetry, literature and culture. He asked the Commission to approve the request.

Winnie Zhang stated that her daughter started attending Little Ivy League in 2005, noting that prior to this, she had the option to attend other schools, but found that they were not as comprehensive as Little Ivy League. She noted that Ivy League has tutoring, structured programs, Chinese, and homework time and that her daughter has made significant progress. She asked the Commission to approve the school.

Nan Leng voiced support for Ivy League and said he believes the school is good for students and for Pleasanton.

Yi Yang shared her child's education experience, stating she moved to Pleasanton in 2002 for better schools and academic focus in after school programs. She stated that her nine-year-old daughter is now able to write in Chinese through attendance at Ivy League. She noted that her younger, seven-year-old daughter went to Kids Club for two years, but she did not learn enough; she then joined Ivy League this last summer and has made great progress. She asked the Commission to approve the application.

John Dieffenbach stated that he has a daughter who is enrolled in John Green in Dublin and that he and his wife needed a tutoring center in Kindergarten. He indicated that they tried a couple of programs that did not work before they found Ivy League. He stated that she received tutoring at the school and received one-on-one training, and they saw significant improvement in the first three weeks. He noted that they are very pleased with the school and asked the Commission to support the application.

Stephanie Lin introduced his son, William Fang, who had spent time writing his speech to the Commission. She echoed comments of the other parents and indicated that she believed the school is offering a very comprehensive program, is consistent in its teachings, and offers caring cultural programs and education. She asked the Commission to support staff's recommendation for approval.

William Fang stated that he has been in Ivy League for three years and that they have Chinese class every day, language arts like writing, reading, and spelling, accelerated reading tests after reading a book, accelerated math, homework time of 45 minutes, and if they do not finish, they go to homework club to finish. He stated that they get all the free time they want from 6:10 p.m. to 6:30 p.m. He noted that today, 20 percent of the world speak Chinese, and 15 percent speak English; he noted that this school teaches both languages. He added that the school evolved from a small school of 30+ students to a 60-student school, and now the students need more space so they can have more fun and education. He asked the Commission to vote yes so they can move to their bigger and better building.

Rachel Tu stated that she and her husband moved to Pleasanton last year and that they have a special needs child. She voiced concern about the level of academia in public schools, discussed her research in supplemental education, and stated that she believes Ivy League is perfect. She stated that the school is very structured and offers advanced math, Chinese language, culture, and writing skills and that six months later, her son's skills have improved, and he can now talk with his grandparents fluently in Chinese. She stated that she can see the program expanding for the benefit of the entire community.

Sonia Gupta stated that when she went back to work, she wanted a good quality after-school program for her son and was very impressed with Ivy League's programs. She noted that he gets good grades, completes his homework, participates in swimming, and can focus on activities other than academics. She said that after seven months, her son is now speaking Chinese to his friends, is multi-lingual, and is extremely proud of the school. She expressed her support for the school's move to a bigger facility and asked the Commission to approve the proposal.

THE PUBLIC HEARING WAS CLOSED.

Chair Blank called for a ten-minute break at 9:00 p.m. and thereafter reconvened the regular meeting.

Chair Blank thanked all those who provided testimony and indicated that staff has done additional research during the break regarding the previous history and would provide further explanation.

Ms. Decker corrected an earlier error that PCUP-179 is the use permit for the Korean Presbyterian Church, which is not affiliated with Little Ivy League or any of its programs. She provided a history of Little Ivy League's growth over time, indicating that the first

conditional use permit related to Little Ivy League was PCUP-84, an application for a daycare facility, approved in August of 2003 for 32 children at 4455 Stoneridge Drive, the Pleasanton Community Church site.

Ms. Decker continued that the second action was PCUP-138, which was the original request by Little Ivy League for a facility at 2340 Santa Rita Road and approved for a maximum of 30 students, Monday through Thursday for 2.5 hours per day and Friday for 2 hours. She noted that in response to an earlier inquiry by the Commission if the program represented this evening to the Commission is the same as what was approved per a conditional use permit, the answer is "no," based on the first conditional use permit issued to Little Ivy League.

Ms. Decker then stated that a third action which should be noted is PCUP-143, an application by United Youth Enrichment, a program very similar to Little Ivy League, which was established under the first action earlier described, PCUP-84, at 4455 Stoneridge Drive. She noted that the reason this approval was under the Pleasanton Community Church was because tutoring would not be allowed at this site without an umbrella, which was the church. She added that as a result, the church applied for a use permit as well as for an expansion to serve as the umbrella parent, effecting the operation of the United Youth Enrichment as an ancillary use of the church, for an after-school program for a maximum of 25 students. She noted that the church operated its daycare separately for 32 children, bringing the total number of children at the site to a maximum of 57.

Ms. Decker stated that at some point, United Youth Enrichment vacated the site and was replaced by Little Ivy League under the auspices of that use permit, and in 2006, Pleasanton Community Church vacated the site and Fountain Community Church took over the conditional use permit. She noted that as a result, Fountain Community Church and Little Ivy League were now operating under the same use permit of Pleasanton Community Church and United Youth Enrichment.

Ms. Decker explained that use permits run with the land, and a similar facility can operate at the site without any other entitlement provided it complies with the hours of operation and number of children. She added that the Director of Community Development may evaluate and approve a request for extended operating hours if found to be in substantial conformance to the use permit; however, this did not occur at this site.

Ms. Decker noted that in this regard, staff has provided the Commission with an e-mail from Mr. Kevin Ho expressing concerns on the operations at 4455 Stoneridge Drive, to which Ms. Soo has provided answers. Ms. Decker stated that this e-mail is coincidental with an action by the City's Code Enforcement Officer who visited the site where Little Ivy League was located to determine if it was operating under the original United Youth Enrichment program's use permit of 25 students. She noted that the Officer found that the facility was not in compliance, having about 50 to 60 children at the site.

Ms. Decker continued that in light of the concurrent application submitted to the City, Little Ivy League then submitted an application to locate at 4430 Willow Road, to be held together with and adjacent to a suite with an application for Fountain Community Church, which was processed and recently approved by the Commission. She stated that during Little Ivy League's leasing process, it determined that the site was no longer viable and found the site at 5925 West Las Positas, which is before the Commission this evening. She noted that the Code Enforcement action begun for 4455 Stoneridge Drive was then held in abeyance because an application had been submitted for a different site. She added that this action is not uncommon with the City's processes.

Ms. Decker noted that the Commission had requested the Minutes of the meetings at which PCUP-143 and PCUP-138 were approved and had inquired if the conditions of approval had changed between these actions. She indicated that PCUP-138, the original Little Ivy League approval at 2340 Santa Rita Road, was limited to 30 students at 2.5 hours a day, and PCUP-143, United Youth Enrichment, has a limitation of 25 students for after-hours as well. She noted that while the conditions for both actions were essentially the same in nature, the number of conditions did change, from six conditions for PCUP-138 to nine conditions for PCUP-143. She added that the current application under consideration has 19 conditions and have more criteria to abide by.

Commissioner Fox noted that the narrative for the application at hand talks about a private recreation facility exemption; however, it appears that Item G of the statute on page 6 appears to correspond to the public recreation program that is referred to in Exemption 7 on Section 101158 of Title 22; and Item L of the statute, the activities for children in an instructional nature in a classroom-like setting, but only for summer and only for 30 days or less, corresponds to Exemption 12 in Section 101158. She inquired where private recreation for the facility as an exemption criteria is based on when the California Code of Regulations does not have it listed as an exemption category and it is not included in the statute as well.

Ms. Seto replied that this is the area that the City is trying to clarify with the County in terms of how the County is looking at and interpreting the statute and regulation.

Chair Blank inquired if the facility, based on the information now known of the facility, including its 58 students, would be in compliance with the approved conditions of the use permit at its existing site if it were to stay at that location. Ms. Decker replied that it was not in compliance, and this is the reason why it has applied for a new location and why the Code Enforcement process was placed in abeyance. Chair Blank inquired if the prime distinction of the non-compliance was the number of students or the nature of operations and hours. Ms. Decker replies that it was both the number of students and the hours of operation.

Commissioner Fox noted that based on the testimony presented, it appears that the program is excellent and students are deriving benefit from the program; however, she is uncomfortable with this having an exemption when the California Code of Regulations and the statute do not specify the exemption that corresponds with the letter from the

State. She stated that she thinks the Korean Church facility is a good location but that she would prefer that a childcare license be obtained.

Chair Blank asked Commissioner Fox the reason for her preference when there is no student at the facility less than five years old. Commissioner Fox replied that State law does not say anywhere that a childcare license is only required for children 4 years, 9 months. She added that the California Code of Regulations does not require a license for children older than 4 years, 9 months. She noted that the children at KinderCare, La Petite Academy, and Quarry Lane After-School Program are older.

Chair Blank reiterated his point that there are no exemptions for those less than 4 years, 9 months old. Commissioner Fox disagreed and noted that it is stated that in a public recreation facility, the program is provided for children under the age of 4 years, 9 months for sessions that run 12 hours per week or less and that are 12 weeks or less in duration; the program shall not permit enrollment in a combination of sessions that total more than 12 hours per week for each child. She noted that this is a public recreation exemption and that this is what Gingerbread House operates under today.

Chair Blank expressed concern about the Commission directly interpreting State law.

Commissioner Pearce inquired if staff foresees any unintended consequences stemming from the Commission requiring the applicant to go and obtain a childcare license as she has indicated she is willing to do, such as triggering a change to the E class occupancy.

Ms. Decker replied that if the Planning Commission were to consider this facility as a childcare center, the occupancy would change from a B to an E, which may or may not then require additional modifications to the structure, depending on a determination to be made by the Building Inspector and the Fire Marshal. She noted that in addition to that, Hacienda Business Park does not currently allow childcare use within the Park, which would mean that a PUD modification would need to be processed. She added that a third consideration would be that an outdoor play area would be required for a childcare license.

Commissioner Fox noted that the Hacienda Child Development Center, a childcare facility, is currently on Chabot Drive across from the Post Office and within Hacienda Business Park. She indicated that she was under the impression that a PUD modification was already in place. Ms. Decker clarified that this location has a different zoning district. Ms. Soo added that the proposed site is within an Industrial Park zoning district where childcare is not a permitted or conditionally permitted use and would require a PUD modification.

Commissioner Pearce stated that it appears to be a great facility. She noted that she visited the site today and met with the applicant and Mr. MacDonald and added that her five-year old now wants to go there and learn Chinese. She indicated that her concern is that she wants to make sure that appropriate protections are provided, given the

number of hours that the children are in the facility. She inquired if there was a way to do that while being consistent with previous applications and acknowledging that there may be unintended consequences while honoring the spirit of what the Commission is trying to do. She further inquired if the Commission could simply condition the applicant to conduct criminal background checks or outdoor space if that is what the Commission is concerned about. She indicated that she would like to create quality childcare in the City while being consistent with prior applications but also recognizing that unintended consequences may result from requiring the applicant to get a childcare license. She noted that the E classification was creating issues for her, and this was not necessarily something that she sees as a potential consequence. She added that the facility looks great, and while she would like to get the protections and conditions, she did not want the applicant to have to go through the PUD modification process.

Chair Blank concurred that the program is great and stated that it is unfortunate it fell out of compliance with the existing PUD. He noted that all the testimony given were very positive and none about why the program should not continue or should not be expanded. He indicated that he wants to be careful about requiring the applicant to obtain a childcare license just because she is willing to do this, and then suddenly finding out that two-hour firewalls have to be installed throughout the church. He stated that he wants to be careful to get the value of the issues the Commission is concerned about, as opposed to simply requiring the applicant to get a childcare license so the Commission does not have to worry about it. He added that the State might then suggest that it believes a childcare license was not issued appropriately. He stated that he believed there was a point at which time the Commission should determine what point it is most concerned about, and this was a very slippery slope.

Commissioner Narum agreed with Chair Blank and stated that what was most important to her would be the criminal background check, a disaster plan for fire and earthquakes, first aid training, whether or not there would be an outdoor play area and what it would look like, all without imposing unnecessary conditions. She indicated that she visited the facility and met with the applicant and Mr. MacDonald. She noted that there is clearly a value and need in the community and that the Commission needs to find a balance in allowing the facility to operate while satisfying the Commission's concern for safety. She added that she also likes the sign-in and sign-out condition, which is already contained in the application.

Commissioner Fox stated that for safety reasons, she would like to ensure that the facility complies with the Building Code for the types and numbers of children who are in the facility. She noted that the Code is there not to put financial burdens on tenants but to protect the public health and safety of the occupants because congregations of children where there are less adult-to-student ratios trigger the Building Code. She indicated that it is not just a matter of updating the building from a B to an E occupancy, but ensuring that a fire that occurred in 2004 at the after-school program across from Dublin Elementary School that burned the building to the ground within one hour does not happen here. She noted that it was fortunate that there were no children in the facility at the time of the fire. Chair Blank noted that that building was not sprinkled.

Commissioner Fox continued that she would like to have the E occupancy in place because State law puts that requirement in place to protect children in numbers of that magnitude. She noted that skirting the regulations is not in conformance with the California Building Code and that she would not support the facility remaining in B occupancy just because it might be financially restrictive.

Commissioner Narum stated that she did not feel the Commission was skirting State law, but rather, the Commission is honoring the State exemption in place while adding further protections, which is the Commission's right to do for businesses in Pleasanton and for the community.

Commissioner Pearce inquired if additional conditions to the application were to be in effect prior to operation of the business in the new building. Ms. Decker replied that would be the case. With respect to ensuring that the occupancy or tenancy in the area meets the Code, she noted that Condition No. 15 requires that the applicant contact the Building and Safety Division and the Fire Marshal prior to the issuance of a business license to ensure the proposed use of the tenant space.

Chair Blank noted that the applicant had that she had contacted and met with the fire and building officials, who inspected the sprinklers and emergency exits and deemed them appropriate for the use.

With respect to the comments made by Commissioner Narum, Ms. Decker stated that those conditions could be added; however, she recommended that the Commission reconsider the requirement for an outdoor play area as there is no real accessible play area on the site other than the parking area, and the adjacent structure and use has numerous truck deliveries on site. She noted that staff has not evaluated this and recommended that if the application were conditioned to require an outdoor play area, the Commission also provide the flexibility to have the Director of Community Development review and make the final determination to ensure the safety of the children.

Chair Blank stated that the program does not seem like the kind of school where the children are in romper room all day but has structured timeframes where the children go from one class to another. He noted that in this sense, he felt an outdoor play area would not be as critical.

Commissioner Pearce inquired if the conditions would be crafted such that they would need to be complied with prior to the issuance of a business license or some other event. Ms. Decker replied that the Commission could condition them prior to occupancy or obtaining a business license. She noted that as stated by the applicant, the Fire Department has visited the facility, and the facility is currently ready to be occupied. She added that the applicant would need to contact the Building and Safety Division prior to occupancy and would require a business license.

Commissioner Narum stated that if the facility's staff would be required to have CPR and first-aid training before a business license is issued, it could take some time to find a class and complete certification. Ms. Decker clarified that they would not be able to occupy the building without a business license. Chair Blank indicated that he believed the training was easy to locate and secure. Ms. Decker recommended the following language for the condition: "The applicant shall obtain first-aid training and CPR within three to six months of the date of occupancy and provide verification for the file."

Commissioner Fox inquired if the City would be liable with this type of condition in place should there be a situation where a child is injured at the facility and is not able to receive CPR because there is no one in the facility qualified to administer it. Ms. Seto said no. She explained that generally, the City is not liable, for example, if it approves the building and the accident occurs in the parking lot. She added that the facility is checked every two years to ensure it remains current with certifications. Chair Blank noted that there is also the Good Samaritan law, which relieves someone of liability.

Commissioner Fox further inquired if the City could be liable if the reason the facility is not licensed is because an exemption has been put in place, which is not backed by State law and by the California Code of Regulations. Ms. Seto replied that with the current application, the City would be relying on the State's exemption provided by Ms. Suzanne Bothwell's letter, Exhibit D of the staff report.

Commissioner O'Connor noted that the exemption is obviously not for the 16 hours or less and inquired what it was based upon for this application. Ms. Seto replied that the Department of Social Services has indicated and granted an exemption for the hours of operation of a facility that operates for more than 15 hours but no more than 12-week sessions. Commissioner O'Connor then inquired who was responsible for ensuring the sessions are no more than 12 weeks. Ms. Seto replied that it is the responsibility of the County's Community Care Licensing under the State Department of Social Services.

Commissioner Narum stated that she would be open to eliminating Condition No. 9 regarding children being escorted to and from the restroom. She then referred to Condition No. 16 and inquired about the use of the word "church." Ms. Decker replied that Condition No. 9 referred to the application at a previous location that had common restrooms outside the facility and would not be applicable at the new location as the restrooms are located within the facility. She added that Condition No. 16 also referred to the previous applicant and can likewise be deleted as the church is not relocating.

With respect to the outdoor play area, Commissioner Narum stated that she did not visit the new site and expressed concern during the summer when the children would be on-site from 8:00 a.m. to 5:00 p.m. She indicated that she would not want to see the children limited to inside a building during that time but would like them to have some kind of outdoor recreation breaks.

Commissioner Pearce stated that she did not want to tell the applicant how to run the facility's program. She suggested that staff craft some language indicating that this would be reviewed by the Director of Community Development.

Mr. Dolan agreed and advised the Commission that it is likely the only logical place for an outdoor play area would be in a fenced-off portion of the asphalted parking lot where pads might be put in.

Chair Blank noted that Quarry Lane School's outdoor play area is all asphalt and concrete. Commissioner Fox suggested having something like the foam surface at Orloff Park or a rubber material that covers the parking lot at the Fountainhead Montessori in Dublin. Commissioner Pearce stated that she did not want to get into designing the area. Chair Blank suggested the language: "There must be an outside play area, subject to the review of the Director of Community Development."

Ms. Decker noted that Little Ivy League has been operating its program successfully for over three years and has not had a need for an outdoor play area. Commissioner Fox noted that the Little Ivy League children have visited Nielsen Park and have used it as an outdoor play area. Ms. Decker stated that she was not aware of this but that the approved program does not require an outdoor play area or excursions to parks.

Commissioner O'Connor noted that other childcare facilities require outdoor play areas and inquired if schools do not have that regulation. Ms. Decker replied that was correct. Commissioner O'Connor stated that if this is a tutoring school, then there would be no requirement for an outdoor play area. He questioned the distinction between this and a childcare facility.

Commissioner Pearce suggested doing something consistent with prior applications such as access to fresh air as opposed to creating an outdoor play space, to be reviewed by the Director of Community Development. Commissioner Narum agreed and reiterated that she did not want the children to be in an enclosed facility for eight or nine hours in the off-school year.

Commissioner Pearce moved to make the required conditional use findings as listed in the staff report and to approve Case PCUP-224, subject to the conditions of approval as listed in the staff report, with the following modifications:

(1) Conditions No. 9 and No. 13 shall be deleted; (2) All adults working in the facility shall be required to undergo first-aid and CPR training prior to issuance of a business license, and the applicant shall ensure that these certifications are current at all times; (3) All adults working in the facility shall be required to undergo criminal background check; (4) The applicant shall prepare and submit a disaster plan to the Planning Division prior to issuance of a business license; (5) The applicant shall prepare and submit a plan that ensures fresh air access for the students during hours of operation as feasible, subject to the review and approval of the Director of Community Department.

Commissioner Narum seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, O'Connor, and Pearce.

NOES: Commissioner Fox.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

Resolution No. PC-2008-60 approving Case PCUP-224 was entered and adopted as motioned.

Chair Blank informed the public that the decision would take effect in 15 days unless appealed.



CITY COUNCIL AGENDA REPORT

February 3, 2009
Community Development
Planning Division

TITLE: PAP-131 (PCUP-224), CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT TO ALLOW A TUTORIAL SCHOOL IN AN EXISTING BUILDING LOCATED AT 5925 WEST LAS POSITAS BOULEVARD, SUITE 200

SUMMARY

This is an application by Jennifer Zheng for a Conditional Use Permit to operate Little Ivy League school, a tutorial facility for 90 children in Grades K-8, at the existing Korean Presbyterian Church of the Tri-Valley located at 5925 West Las Positas Boulevard, Suite 200. The facility provides tutoring on a variety of English and Math subjects with a special focus on Chinese language and culture. On December 10, 2008, the Planning Commission, on a 4:1 vote, approved the proposed use with conditions of approval requiring first aid and CPR training and background checks for employees, and provisions for daily exercise for students during summer and school break sessions.

Planning Commissioner Fox appealed the Planning Commission's approval to the City Council (Attachment 6).

PLANNING COMMISSION ACTION

Approved Conditional Use Permit Case No. PCUP-224, subject to the conditions of approval as shown in Exhibit B of Attachment 1.

RECOMMENDATION

Staff recommends that the City Council adopt the attached draft resolution denying the appeal, thus upholding the Planning Commission's approval of Case No. PCUP-224, subject to the conditions of approval as shown in Exhibit B of Attachment 1.

FINANCIAL STATEMENT

No fiscal impact to the City or public services is anticipated.

BACKGROUND

In September 2006, the Planning Commission approved Case No. PCUP-171, allowing the Korean Presbyterian Church to operate a church and other ancillary programs in an existing building located at 5925 West Las Positas Boulevard, Suite 200. The Church facility includes eight classrooms for a children’s Sunday school program.

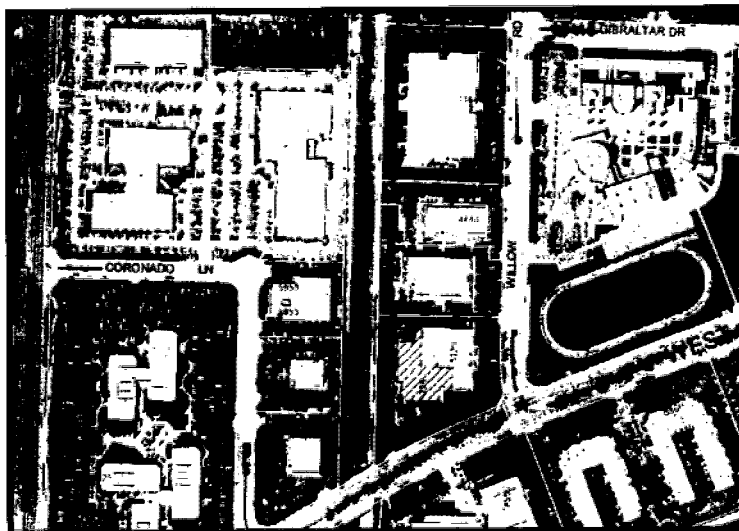
Little Ivy League, an after-school tutorial facility (Case No. PCUP-138), wishes to relocate to 5925 West Las Positas Boulevard and share the facility with the Korean Presbyterian Church. It will use the classrooms described above when the Sunday school is not in session.

Operational History of Little Ivy League

Little Ivy League began operation at 2340 Santa Rita Road in 2005 as an after-school enrichment program. A Use Permit was granted by the City to accommodate 30 students. Little Ivy League moved to 4455 Stoneridge Drive in 2007 where it operated under a Use Permit granted to Pleasanton Community Church for an after-school daycare program and after-school tutoring program. More detail on this chronology is provided in Attachment 8.

Site Description

The subject site is a 3.44-acre parcel located on the north side of West Las Positas Boulevard and the southwest corner of Willow Road. The existing single-story building is approximately 45,525 square-feet and is occupied by two tenants – the Korean Presbyterian Church and Direct Buy, a furniture warehouse. The existing building was subdivided into two condominiums in November of 2005. Each tenant currently uses approximately one-half of the building area. As there are no common hallways in the building that would provide interior access between the two tenant suites, each tenant has its own independent entrance/exit.



Site Location

The subject site borders Hart Middle School to the east across Willow Road, Agilent Technologies and Hewlett Packard Invent to the north, the Chabot Canal to the west, and professional/commercial/industrial service offices to the south across West Las Positas Boulevard. The building is surrounded by a shared parking lot with a total of 173 parking spaces, six of which are handicap parking spaces. Access to and from the site is from West Las Positas Boulevard or Willow Road. The nearest residential properties are located approximately 900 feet south of West Las Positas Boulevard.

Project Description

Little Ivy League (LIL)¹ is an existing tutorial facility that provides academic enrichment classes to school-age children. It provides a variety of tutorial programs emphasizing Chinese culture, art, English language, and math. While LIL focuses its programs on students in Grades K-8, it also offers art and cultural programs to adults in the morning when the students are in school. LIL proposes to operate from 9:00 a.m. to 6:30 p.m., Monday through Friday. During school breaks, the facility would operate from 8:00 a.m. to 6:30 p.m., Monday through Friday.

LIL would utilize the Church's Sunday school classrooms to conduct its programs. It would pickup up students from local schools after school/class is dismissed. Students would then be picked up at the project site at the end of the day. LIL will implement a parent sign-out procedure so that LIL staff will not release any student to an unauthorized person.

For additional project information, please refer to the Planning Commission staff report (Attachment 5) and the applicant's project operational description (Attachment 3).

PLANNING COMMISSION ACTION

The Planning Commission held a public hearing on December 10, 2008 to review the proposed project. Detailed information on this meeting is provided by the attached excerpts of the Planning Commission meeting minutes (a podcast is also available on the City's web site at www.ci.pleasanton.ca.us). A larger number of LIL parents spoke at the hearing indicating support for the project. The Commission approved the application on a 4-1 vote (Commissioner Fox dissenting), subject to staff's recommended conditions with modifications requiring the applicant to: require a criminal background check for all adults employed by the facility prior to the obtaining a business license; require all adults working in the facility to undergo first-aid and CPR training and ensure that these certifications are current at all times; prepare and submit a disaster plan to the Planning Division; prepare and submit a plan that ensures fresh air access for the students during summer and winter school breaks as feasible, subject to the review and approval of the Director of Community Department.

DISCUSSION

Commissioner Fox indicated that she appealed the Planning Commission approval for the following reasons: the proposed facility is not a recreation facility, and so it should not be exempt from childcare licensing requirement; the building where the facility would be located cannot meet the requirements for childcare center occupancy.

¹ It is also referred to as "Yang Fan Academy".

According to the Community Care Licensing Division of the State Department of Social Services (DSS), the applicant's use is exempt from the requirement to obtain State licensing. Per Section 101158 of Title 22, facilities are eligible for an exemption if they serve school-age children (children over the age of four years and nine months) who attend sessions that total no more than 15 hours or more per week for each child, or, if the school-age children are enrolled in sessions (with no limit on hours per week) that are 12 weeks or less in duration. Children may be enrolled in back-to-back sessions as long as they are re-enrolled at the end of a 12-week session.

The Planning Commission had a lengthy discussion on the State exemption. Commissioner Fox felt strongly that the proposed facility does not qualify for the exempt status as she believes the exemption is intended to be granted for "recreation" facilities only.

Staff has concluded that in this case, the procedures and practices for issuing waivers of State requirements are not for the City to determine. In light of the State waiver, staff believes that all substantive concerns about the operation of the Little Ivy League facility have been addressed through the recommended conditions of approval.

OPTIONS FOR CONSIDERATION

The following are options that the Council may wish to consider and/or discuss:

Option No. 1:

Determine that the Planning Commission action, including conditions, is appropriate. While the majority of the Commission felt that the proposed facility did not require a State childcare license, the Commission wanted to ensure that appropriate and necessary protections would be provided and, therefore, imposed the following specific requirements:

- All adults working at the facility shall obtain CPR and First Aid training;
- All adults working at the facility shall undergo a criminal background investigation;
- A disaster plan should be in place; and
- A plan providing fresh air access to all students shall be implemented.

This option would allow the applicant to operate as a tutorial facility without a childcare license but would impose similar local requirements that would be imposed by the State were the facility to pursue a childcare license.

Option No. 2:

Determine that the facility is a childcare center.

If the proposed use is categorized as a childcare center, the following would need to be in place prior to operation:

- A modification to the Hacienda Business Park PUD. The current PUD approval does not allow a childcare center to be located in the district either as a permitted use or as a conditionally permitted use.

- The facility would have to obtain a childcare license from the DSS. The proposed facility would need to meet all the requirements of the State for childcare centers including requirements for outdoor play areas.

This option would allow the operator to reapply for a use permit for a childcare facility at this or another location.

ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Section 15301, Class 1. Therefore, no environmental document accompanies this report.

CONCLUSION

Staff believes that the conditions of approval required by the Planning Commission relating to requirements for CPR and First Aid training, and background checks for staff, and the requirement to provide some form of outdoor activity for students mitigate the concerns that would be addressed through the State childcare licensing process. Staff continues to support the approval by the Planning Commission as described in Option No. 1. Staff recommends that the City Council deny the appeal thereby upholding the Planning Commission's decision to approve the Conditional Use Permit. A draft resolution implementing this option is provided in Attachment 1.

Submitted by:



Brian Dolan
Director of Community Development

Approved by:



Nelson Fialho
City Manager

Attachments:

1. Draft Resolution, with Exhibit B, Draft Conditions of Approval
2. Location Map and a 1,000-foot radius Notification Map
3. Exhibit A, including operation description, floor plan, childcare licensing exemption letter, dated "Received, September 30, 2008"
4. Excerpt of the Planning Commission Meeting Minutes, dated December 10 2008
5. Planning Commission staff report, dated December 10, 2008 (without Attachments)
6. Email from Planning Commissioner Anne Fox appealing the Planning Commission approval
7. Applicant's letter regarding the appeal
8. Operational History of Little Ivy League

PUBLIC HEARINGS AND OTHER MATTERS

11. **Continued from February 3, 2009 – Public Hearing:** PAP-131 (PCUP-224), Little Ivy League School – Consider an appeal of the Planning Commission's approval of a conditional use permit to operate a tutorial school with a maximum of 90 students at 5925 West Las Positas Boulevard, Suite 200

Community Development Director Brian Dolan reviewed the application for a tutorial school at the proposed location in the existing Korean Presbyterian Church. The school would accommodate a maximum of 90 children with a minimum age of 4 years and 9 months. Curriculum would concentrate on Chinese language and culture as well as English and mathematics. The facility is located directly across from Hart Middle School, is approximately 40,000 square feet of which the church occupies roughly half, and the school classrooms would comprise approximately 8,000 square feet.

Issues associated with the application have been limited but controversial, and they focus on distinctions between childcare and tutorial facilities. The State has judged the structured academic and cultural curriculum to be more in line with a tutorial school and granted a licensure exemption.

The Planning Commission has developed conditions of approval to address the concerns surrounding the school operation which include background checks as well as first-aid and CPR training requirements. Additional concerns were raised over the opportunity for fresh air exercise during the summer months. In response, the Planning Commission created conditions and staff crafted Condition 21 which allows the Community Development Director a fair amount of discretion. As both the property owner and business park are not thrilled with idea of shoe-horning a playground, he met with the applicant to discuss a programmatic solution. They have agreed that the school may, on a daily basis, escort the children to the park or middle school playground provided that it obtains the necessary permits and pays any applicable fees associated to secure the use of a public facility for private profit. Staff has received correspondence from the applicant's attorney suggesting that they disagree with the evolution of this particular condition.

Councilmember Sullivan questioned and confirmed that the school is still currently operating at 4455 Stoneridge Drive.

Mayor Hosterman opened the public hearing.

Anne Fox, appellant, stated that she is concerned over the recent number of applicants who, having been deemed childcare centers by the State, submit numerous proposals to the Planning Commission in an attempt to become licensing exempt. She likened this private recreation facility application to the one for Tri-Valley Martial Arts A+ Afterschool Success Academy approved by the Planning Commission, but ultimately overturned by the City Council.

Ms. Fox stated that the proposed use does not comply with the City's previously employed definition of a tutoring facility, is not located in a district where the Municipal Code supports private recreation facilities, and exceeds the operating limits for an instructional facility exemption as set forth in Health and Safety Code 1596.792L. In addition, the Little Ivy League School (LIL) has provided information that it is an academic private school yet is not registered with the California Department of Education; has submitted letters from the State which reference a statute that does not list a private recreation facility as an exemption; and has submitted conflicting iterations in regards to hours of operation.

Ms. Fox closed by asking the City Council to find that this application, as well as other childcare providers that attempt to define themselves otherwise, requires a childcare license.

Councilmember Sullivan asked staff for the appropriate application of Health and Safety Code 1596.792L which stipulates that an instructional facility shall not operate more than 30 days in a 12 month period.

City Attorney Roush requested time to review and consider the referenced code.

Jennifer Zheng, applicant, founded the Little Ivy League School in 2005 to give her own children the opportunity to learn Chinese language and culture, as well as review their classroom learning in a very structured environment. An influx of Asian residents in the community has

spawned significant growth in the school, whose current location has been sold. Ms. Zheng said that she has exhausted all options for a suitable location, including the purchase of a business condominium that fell through due to its proximity to cellular towers, and she asked the Council to support the Planning Commission's decision.

Vice-Mayor Cook-Kallio asked how many current students are kindergarten-aged or may be in attendance more than a couple of hours per day. Ms. Zheng said there are currently eleven students in that age range and she added that they do not plan to have more than fifteen enrolled.

Mayor Hosterman acknowledged the tremendous turnout in support of the school.

Peter MacDonald, the applicant's attorney, said that Ms. Fox is asking the City Council to second guess the way a State agency applies its own rule. He noted that those rules clearly state a basis for exemption on anything that is essentially an afterschool organization catering to children of this age range and that the use of the term tutoring school has been a longstanding practice of the City of Pleasanton.

Mr. MacDonald and his client support the conditions of approval with the exception of condition 21; the applicant is willing to make reasonable attempts to offer fresh air and exercise periods, but does not approve of the condition's wording which puts City staff in the position of managing the school's daily curriculum. He said that the Little Ivy League School's quality faculty and programs provide an incredibly important service to the Chinese families in Pleasanton who seek a safe, adult supervised environment for their children. Pleasanton however, does not have a lot of location opportunities for facilities such as this and those that are appropriate are unavailable. The applicant has found an ideal facility in the Korean Presbyterian Church; the Hacienda Business Park supports its use and this application, as does the State and Planning Commission.

Mr. MacDonald suggested that the City should focus on land use compatibility and avoid entangling its staff in the ongoing management of private school curriculum. He asked the Council to approve the staff recommendation and conditions of approval, except as expressed regarding condition 21.

Jay Cho, Tri-Valley Presbyterian Church, reiterated Mr. MacDonald's comments and added that the church welcomes this opportunity to maximize its use and synergistically support the Pleasanton community.

Penelope Dong said her two children attend LIL and she is very impressed with the quality of the school's staff and curriculum which provides educational and behavioral programs in addition to Chinese lessons. She doubted the availability of a more suitable alternative for her children.

Leon Donn stated that as a working family with two small children, he is pleased that his kids have a safe environment with a structured academic program to attend after school.

Myung Lee, senior pastor of the Tri-Valley Presbyterian Church, said that Pleasanton is a wonderful community that embraces differences in culture and opinion but stressed the need to focus on what supports and guides the community as a whole.

Fred Oh, Tri-Valley Presbyterian Church, stressed Mr. MacDonald's comments. He said that the Pleasanton School District provides wonderful facilities and resources for its children but cannot offer the same afterschool environment as LIL. The church and school provide an opportunity for a mutually beneficial and symbiotic relationship and he asked the Council what is best for the children.

Frank Huang expressed support for LIL.

William Huang, Justin Donn, and Soloman Alber spoke together as fourth graders enrolled in LIL. They acknowledged the concerns raised over students' summertime activities and explained that in addition to their regular academic classes, they swam, attended movies, and visited the library regularly last summer. They described LIL's learning program as fun and unique, noted that 20% of the world population speaks Chinese while only 15% speaks English, and explained that the school maximizes opportunity by teaching both. They asked the Council to vote in support of LIL so that they may move into a larger building with more fun activities and learning projects.

Stephanie Liu said that LIL offers a program full of quality, consistency, communication, and collaboration. She asked for the Council's support and noted she and the other parents plan to support Ms. Zheng until this is resolved.

Gary Kumfert said he initially believed LIL to be little more than a daycare program but soon learned that it is an environment dedicated to learning and enrichment. He explained that his daughter is half Chinese, said that it is natural for children of immigrants to discard their heritage, and that he is pleased the program at LIL has inspired a fascination with Chinese language and culture in his daughter. Her experiences there have given her an opportunity that he hopes will be available for his son when he is of age.

Winnie Zhang said that her daughter used to attend the Kids Club afterschool program until she discovered that the program was not enough for her. LIL has provided an impressive opportunity with summer and math reading programs that are excellent supplemental programs to students' regular curriculum, fun and individually catered learning experiences, and resources that school budgets cannot hope to offer. She asked the Council to assist them in improving these programs further by supporting this move.

Kevin Yip concurred with previous speakers' comments regarding the quality of LIL's program. He said that Pleasanton's superior educational infrastructure is the core of its retained property values in the present economy and that voting in support of LIL would only add to the community's value further.

Xian Wen said that he has recently returned to Pleasanton after three years in China. He explained that he accepted a position in China to give his son an opportunity to learn the language and culture. Upon returning, he discovered LIL's program and is very pleased with the quality of the program and its staff. He acknowledged the concerns raised and suggested that the Council use them as an opportunity to improve what is already an excellent program.

Elizabeth Shackelford stated that she is a California credentialed K3 Classroom Teacher who has worked at LIL teaching writing and phonics for the last two and a half years. She explained that the school feels more like a middle-school than a daycare with a schedule for each child that includes both educational and elective type classes and additional writing and phonics classes that meet weekly. She said that she runs her classes using the teaching standards set

by the State of California so that her students are exposed to the same skills and writing styles as they are in school. Her classes are focused and academically rigorous and she communicates with all parents in person as well as via send-home notes and email. Ms. Shackelford stressed that she is a teacher, not a daycare worker and believes that she has a unique opportunity to continue her career while also staying home with her own children during the day. She asked the Council to vote in support of LIL so that it may continue to offer the same high level of academic support and learning opportunities that it does now.

Dr. Elliott Alber said that he moved to Pleasanton specifically for the opportunities provided by LIL. His family does not speak Chinese, but he believes fluency in several foreign languages to be a necessity in the modern world. He stressed that academic achievement is paramount to both him and LIL, and cautioned the Council that a vote against this relocation could pose a great loss to the local community.

Rachel Tu reiterated the previous comments and noted that the program welcomes students of all ethnicities, strengthens the community and should be embraced.

Ms. Fox stressed that she is not questioning the quality of LIL's program but believes licensing is very important. A licensed program requires that the director has either a Commission of Teacher Credentialing Child Development Site Supervisor Permit or an equivalent accreditation issued by the Department of Child and Social Services. She believes it is important to set standards whereby the State monitors and maintains the safety and conduct of those facilities and noted LIL was found to be operating in excess of its CUP last fall. She cited additional operational similarities between LIL and other programs, all of which are licensed, and said that failure to require such here would make it the only church operating an unlicensed afterschool program in Pleasanton.

Ms. Zheng said that the City's primary concerns seem to revolve around the background checks and appropriate safety training of her staff. She explained that all staff has cleared the first level background check and that as the City does not have a supporting fingerprinting process in place, the latter may take some additional time. First-aid and CPR certification course have been scheduled. In response to Ms. Fox, she stated that repeated conversations with the State Department have reiterated that this sort of exemption is being granted throughout the state.

Councilmember McGovern noted that at the Planning Commission hearing Mr. MacDonald said the applicant was willing to obtain a childcare license and asked if they were still willing to do so. She said that she is concerned that the State grants these exemptions so that it does not have to follow through with supervision of the programs and believes it is due to the budget crisis.

Ms. Zheng deferred to Mr. MacDonald who confirmed that they will do so if the City requires it. He cautioned that it would create a zoning issue due to the requirement of a private and exclusive outdoor play area. While the applicant is willing to fence off a portion of the church's parking lot, it seems ridiculous to do so considering the ample square footage available inside and the proximity to Hart Middle School's play area. He also cautioned that the State has made it very clear that it considers this an afterschool program, does not want to have to issue a license for it, and tends to feel burdened when cities needlessly throw programs into their process.

The public hearing was closed.

Vice-Mayor Cook-Kallio noted that the applicant has complied with the substance of the law which requires a background check, CPR training, and provisions for fresh air activities and asked if the only remaining issue with regards to licensure would be the zoning requirements. Mr. MacDonald confirmed and added that the State does not have the resources to license afterschool programs.

Vice-Mayor Cook-Kallio questioned and confirmed that the key issues that would be governed by a license have been addressed.

Councilmember McGovern noted that the issues of fresh air and suitable play areas as required by a license had not been properly addressed; Mr. MacDonald said that the State's particular concern is that by requiring all afterschool programs to have playgrounds, children will have fewer afterschool options rather than more playgrounds available. She said that Pleasanton's Municipal Code contains only one paragraph on childcare facilities which simply states that they cannot be located within a minimum of 300 feet of a personal wireless facility and provides guidelines on the location and landscaping of any State-mandated outdoor play areas. She noted that there are no current City, State, Federal definitions of tutorial or heritage schools but that at the time the application was filed with the City, it stated plans to operate an extended daycare program with a childcare license.

She expressed confusion over changes in terminology and concern that the State is attempting to relieve itself of its obligations by issuing these exemptions. She asked Mr. Roush whether or not this proposal could be reasonably exempt under 1596.792.

Mr. Roush explained that the State's manual regarding licensing requirements essentially equates private recreation programs with public ones in terms of qualifying criteria but the actual statute does not list the same specific criteria for both. The State has taken an expressed statute and applied it to a different program, and he suggested that one could question the authority to do so.

Councilmember McGovern said that she also indicated that there are different exemptions for recreation programs and instructional programs; the recreational program exemption only applies if the hours of operation are during non-school hours and either 16 hours or less per week or a maximum of 12 weeks per year. She noted that this proposal does not comply with those limitations.

Mr. Roush explained that this program could utilize both exemptions. During the regular school year, the proposed hours of operation meet the standards for recreational programs so long as the applicant uses a revolving 12 week enrollment. Summer vacation and school holidays would comply with the instructional program exemption which allows for unlimited daily hours but cannot exceed a total of 30 days in a 12 month period.

Councilmember McGovern noted that the State's exemption letter only mentions private recreation programs and argued that even if it were to consider instructional programs, the application proposes more than 30 days of non-school day operation within a 12 month period. She suggested that a license would allow LIL much greater flexibility in its operation.

Mr. Roush agreed that if it were to operate as a daycare facility most of the issues raised would not be a concern.

Councilmember McGovern reiterated the increased flexibility a license would provide which would, in turn, benefit all parties involved.

Vice-Mayor Cook-Kallio stated that the conditions of approval appear to address all of the Planning Commission's concerns. She said the programs offered sound more like a school than a daycare and as a foreign language teacher herself cautioned against underestimating the comprehensive and consistent opportunity for language acquisition provided by LIL. The consolidated combination of programs offered actually serves to reduce the carbon footprint and allows children an opportunity to complete their studies before going home to enjoy time with their families; lack of this is a problem identified with young kids in most communities.

She said that when interpreting the State's statutes, it is incumbent upon the Council to look at the substantive nature of what is written rather than a single word and noted that the proposed hours of operation do not necessarily mean that every child is in attendance for that full length of time. She expressed support for staff's recommendations, suggested that Condition 21 could be reworded if necessary, and said that in a time when public schools are facing significant cutbacks, it would be wrong to limit the possibility of students receiving the enrichment this program offers.

Councilmember Thorne relayed his visit to and impressions of the school and its staff. He expressed support for the application, staff's recommendations, and the Planning Commission's decision to approve what is a clear benefit to the community. He also suggested that Condition 21 could be reworded, if necessary.

Councilmember Sullivan said that this is a wonderful program that provides a great opportunity for the children, but in light of the numerous similar applications coming before the City, it is important to step back and consider the bigger issues. Historically, applications for programs of a similar nature were all very structured, licensed, and offered play areas while recent applications seem to be almost ad hoc, covering a wide range of services over extended hours and accompanied by letters of exemption. He cited specific concerns over exemptions that sound like loopholes and the potential number of hours children could remain in an indoors school-type setting with essentially no outdoors time. He acknowledged the limitations associated with the school's current location but suggested that the community use this as an opportunity to come together with the Human Services Commission to develop a set of guidelines and criteria for these programs.

Councilmember McGovern questioned and confirmed that this application proposes 90 students in attendance at one time. She asked and confirmed that LIL is open during the summer and on school holidays from 8:30 a.m. to 6:30 p.m., meaning that there could be 90 children in attendance for 10.5 hours each of those days.

Councilmember Sullivan said that the staff report indicated a student-teacher ratio of 10:1 which mean a potential total of 100 people.

Mr. Dolan explained that Condition 21 would apply during those extended hours and provisions for a trip to the park would be required.

Councilmember McGovern reiterated the same concerns as Councilmember Sullivan, including the need for definitions, standards, and guidelines that apply to childcare. She stressed that the initial application was for a licensed extended daycare facility and that regardless of how wonderful the program offered is, a license ensures that the State will protect the rights and

safety of the children. In a community where most parents work, the need for suitable childcare programs will continue to grow and she does not wish to see the Council continually attempt to make legal determinations without any set standards.

She also expressed concern that Condition 21 would set a precedent granting all childcare facilities in the City a master permit to its parks; doing so places undue burden on the condition of playgrounds and parks as well as the limited budgets charged with their maintenance.

Mayor Hosterman suggested that the Council discuss how to address Councilmember Sullivan's and McGovern's concerns during Matters Initiated but said that State has made its position on the exemption clear and the Council's role tonight is to operate within that. She said that the wild success of this program clearly requires a larger space and Ms. Zheng has done a marvelous job of marrying the church with an opportunity for children to improve their English and math along with Chinese language and culture.

Motion: It was m/s by Thorne/Cook-Kallio to adopt **Resolution No. 09-263** to uphold the Planning Commission's approval of a conditional use permit with the conditions set forth by staff. Motion passed by the following vote:

Ayes:	Councilmembers Cook-Kallio, Thorne, Mayor Hosterman
Noes:	Councilmembers McGovern and Sullivan
Absent:	None

EXHIBIT F**EDUCATION CODE
SECTION 33195-33195.6**

33195. (a) Every person, firm, association, partnership, or corporation operating a heritage school as defined in Section 33195.4 shall, between the 1st and 31st day of January of each year, commencing on January 1, 2011, file with the Superintendent an electronic registration form, under penalty of perjury, by the owner or other head setting forth the following information for the current year:

(1) All names, whether real or fictitious, of the person, firm, association, partnership, or corporation under which it has done and is doing business.

(2) The address, including city and street, of every place of doing business of the person, firm, association, partnership, or corporation within the State of California.

(3) The names and addresses, including city and street, of the directors, if any, and principal officers of the person, firm, association, partnership, or corporation.

(4) The school enrollment, by grade span, number of teachers, and coeducational or enrollment limited to boys or girls.

(5) That the following records are maintained at the address stated, and are true and accurate:

(A) The courses of study offered by the institution.

(B) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each faculty member.

(6) Criminal record summary information that has been obtained pursuant to Section 44237.

(7) The heritage school telephone number.

(b) Whenever two or more heritage schools are under the effective control or supervision of a single administrative unit, the administrative unit may comply with the provisions of this section on behalf of each of the schools under its control or supervision by submitting one report.

(c) Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for any school to expressly or impliedly represent, that the State of California, the Superintendent, the state board, the department, or any division or bureau of the department, or any accrediting agency has made any evaluation, recognition, approval, or endorsement of the school or course, unless this is an actual fact.

(d) Filing pursuant to this section does not grant a heritage school any right to receive state funding.

33195.1. (a) Commencing January 1, 2011, the electronic registration form filed with the Superintendent pursuant to Section 33195 shall, under penalty of perjury, include a statement manifesting compliance with the following paragraph:

(1) A person, firm, association, partnership, or corporation offering or conducting heritage school instruction shall not employ a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(b) In the case of any heritage school where an instructor also serves as the administrator of the school, the electronic registration form shall be made available upon request to the parents or guardians of all pupils currently enrolled in the school and to any parent or guardian considering whether to enroll his or her child in the school.

33195.2. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a heritage school to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

- (1) School and classroom janitorial.
- (2) Schoolsite administrative.
- (3) Schoolsite grounds and landscape maintenance.
- (4) Pupil transportation.
- (5) Schoolsite food-related services.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a heritage school in an emergency or exceptional situation, such as when a pupil's health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a heritage school when the heritage school determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the heritage school shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a heritage school has made this determination, the heritage school shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) A heritage school may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 33195.3 and the entity's employees to comply with the requirements of this section, unless the heritage school determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the heritage school shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a heritage school makes this determination, the heritage school shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a heritage school requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision (e).

(e) (1) The heritage school contractor shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all employees of entities, as identified in subdivisions (a) and (d), that contract with a heritage school, as defined in Section 33195.4, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this subdivision. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a fitness determination to the heritage school contractor.

(3) The Department of Justice shall provide a state response to the heritage school contractor pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The heritage school contractor shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for employees described in paragraph (1).

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in the subdivision.

(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of schoolsite employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court having jurisdiction where he or she is resident.

(g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall certify in writing to the heritage school that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1.

(h) An entity having a contract as specified in subdivision (a) on the effective date of the act adding this section and an entity required to comply with this section pursuant to subdivision (d) by a heritage school with which it has a contract on the effective date of the act adding this section shall complete the requirements of this section within 90 days of that date.

(i) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may request electronic submission of the fingerprint cards and other information required by this section.

33195.3. (a) A heritage school contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 33195.2 and the Department of Justice shall comply with subdivision (d) of Section 33195.2.

(3) Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a heritage school for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section

33195.2 if one or more of the methods described in subdivision (a) is utilized.

(c) (1) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school facility in an emergency or exceptional situation, such as when a pupil's health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(2) For purposes of this section, a violent felony means any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony means any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

33195.4. For purposes of this article, "heritage school" means a school that serves children who are at least 4 years and 9 months of age and no older than 18 years of age, who attend a public or private full-time day school, that does all of the following:

(a) Specifies regular hours of operation.

(b) Offers education or academic tutoring, or both, in a foreign language.

(c) Offers education on the culture, traditions, or history of a country other than the United States.

(d) Offers culturally enriching activities, including, but not limited to, art, dancing, games, or singing, based on the culture or customs of a country other than the United States.

(e) Maintains membership in a state or national cultural or language association.

(f) Complies with relevant local government regulations, where applicable.

(g) Does not operate out of a residential home.

(h) Complies with the requirements of Section 33195 and maintains in its possession a copy of the registration form electronically filed with the Superintendent. The heritage school shall make this form available upon request, including to the State Department of Social Services, to verify exemption from child care licensure.

33195.5. (a) The Heritage Enrichment Resource Fund is hereby established in the State Treasury. Moneys deposited in the fund may be expended by the Superintendent upon appropriation by statute, for the purposes of this article.

(b) The electronic registration form to be filed pursuant to this article shall be filed together with a fee determined by the Superintendent to be sufficient to cover, but not exceed, the costs of the department in implementing this article. The fees shall be deposited into the Heritage Enrichment Resource Fund. The fee shall be received by the Superintendent no later than January 31 of each year in which the registration form is filed.

33195.6. (a) A director of a heritage school shall undergo at least 15 hours of health and safety training. The training shall include all of the following components:

(1) Pediatric first aid.

(2) Pediatric cardiopulmonary resuscitation (CPR).

(3) A preventive health practices course or courses that include instruction in the recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries.

(4) Training in pediatric first aid and CPR pursuant to paragraphs (1) and (2) shall be provided by a program approved by the American Red Cross, the American Heart Association, or the Emergency Medical Services Authority pursuant to Section 1797.191 of the Health and Safety Code.

(5) Training in preventive health practices pursuant to paragraph (3) shall be provided by a training program approved by the Emergency Medical Services Authority.

(6) In addition to the training programs specified in paragraphs (4) and (5), training programs or courses in pediatric first aid, pediatric CPR, and preventive health practices offered or approved by an accredited postsecondary educational institution are considered to be approved sources of training that may be used to satisfy the training requirements of paragraphs (1) to (3), inclusive.

(7) Persons who, prior to the effective date of this section, have completed a course or courses in preventive health practices as described in paragraph (3), and have a certificate of completion of a course or courses in preventive health practices, or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices, shall be deemed to have met the training requirement for preventive health practices pursuant to paragraph (3).

(b) All employees and volunteers of a heritage school shall be in good health, as verified by a health screening, including a test for tuberculosis, performed by, or under the supervision of, a licensed physician and surgeon.

(c) Pupils attending heritage schools shall have access to working sinks, toilets, and drinking water.

(d) No pupil attending a heritage school shall have access to medication or cleaning supplies, except as otherwise provided by law.

(e) A heritage school, as defined in Section 33195.4, shall not be subject to licensure by the State Department of Social Services as a child day care center pursuant to Chapter 3.4 (commencing with Section 1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code.

(f) Upon a pupil's enrollment in a heritage school, the heritage school shall provide a notice to the pupil's parent or guardian stating that the heritage school is exempt from child care licensure, and that attendance at a heritage school does not satisfy California's compulsory education requirements pursuant to Section 48200.

HEALTH AND SAFETY CODE

SECTION 1596.70-1596.799

1596.70. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with 1597.30) may be cited as the California Child Day Care Facilities Act.

1596.71. This chapter applies to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30). This chapter also applies to Chapter 3.65 (commencing with Section 1597.70).

1596.72. The Legislature finds all of the following:

- (a) That child day care facilities can contribute positively to a child's emotional, cognitive, and educational development.
- (b) That it is the intent of this state to provide a comprehensive, quality system for licensing child day care facilities to ensure a quality day care environment.
- (c) That this system of licensure requires a special understanding of the unique characteristics and needs of the children served by child day care facilities.
- (d) That it is the intent of the Legislature to establish within the State Department of Social Services an organizational structure to separate licensing of child day care facilities from those facility types administered under Chapter 3 (commencing with Section 1500).
- (e) That good quality child day care services are an essential service for working parents.

1596.73. The purposes of this act are to:

- (a) Streamline the administration of child care licensing and thereby increase the efficiency and effectiveness of this system.
- (b) Encourage the development of licensing staff with knowledge and understanding of children and child care needs.
- (c) Provide providers of child care with technical assistance about licensing requirements.
- (d) Enhance consumer awareness of licensing requirements and the benefits of licensed child care.
- (e) Recognize that affordable, quality licensed child care is critical to the well-being of parents and children in this state.

1596.74. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30).

1596.75. "Child" means a person who is under 18 years of age who is being provided care and supervision in a child day care facility, except where otherwise specified in this act.

1596.750. "Child day care facility" means a facility that provides nonmedical 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 less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

1596.76. "Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers.

1596.77. "Department" means the State Department of Social Services.

1596.770. "Director" means the Director of Social Services.

1596.771. "Employer-sponsored child care center" means any child day 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.

1596.773. (a) "Probation" means the period of time that a licensed child day care facility is required to comply with specific terms and conditions set forth by the department in order to stay or postpone the revocation of the facility's license.

(b) "Revocation" means an administrative action taken by the department to void or rescind the license of a child day care facility because of serious or chronic violations of licensing laws or regulations by the facility.

1596.775. The Legislature finds and declares all of the following:

(a) There is a severe shortage of child care for schoolage children throughout California, with many schoolage children going home to an empty, unsupervised setting after school.

(b) For nearly five years several counties have participated in a pilot program that allows for a family day care home to care for two additional children above the current number allowed pursuant to licensing regulations.

(c) As part of the pilot program, a study was conducted by the Assembly Office of Research. The results of the study demonstrated that the pilot program achieved all of the following results:

- (1) Increased access to care for schoolage children.
- (2) Participating providers encountered few problems and strongly support expansion of the program.
- (3) Parents of children in the pilot program family day care homes strongly support the program.
- (4) Participating providers with additional children were no more likely to receive substantiated complaints from licensing officials than nonparticipants.
- (5) Local governments and planning officials saw little or no impact on their licensing policies and procedures.
- (6) Overall quality of care was not adversely affected.

1596.78. (a) "Family day care home" means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per

day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

(b) "Large family day care home" means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) "Small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home, as set forth in Section 1597.44 and as defined in regulations.

1596.785. "Nonminor student" means a person 18 years of age or older who qualifies as an individual with exceptional needs, as defined in Section 56026 of the Education Code, and who qualifies for services from a regional center for persons with developmental disabilities, as a person with a developmental disability as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code. The terms "child," "children," or "minor," as used in this chapter or Chapter 3.5 (commencing with Section 1596.90), may also include a nonminor student enrolled or retained at a schoolage child care center.

1596.79. "Person" means an individual, partnership, association, corporation, limited liability company, or governmental entity, such as the state, a county, city, special district, school district, community college district, chartered city, or chartered city and county.

1596.790. "Planning agency" means the agency designated pursuant to Section 65100 of the Government Code.

1596.791. "Provider" means a person who operates a child day care facility and is licensed pursuant to Chapter 3.5 (commencing with Section 1596.90) or 3.6 (commencing with Section 1597.30).

1596.7915. "Schoolage child care center" means a day care center or part of a day care center that provides nonmedical care and supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of schoolage children or nonminor students, or both, in a group setting for less than 24 hours per day.

1596.792. This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both

of the following:

(1) Is operated only during periods of the year when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections and Rehabilitation that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) Any crisis nursery, as defined in subdivision (a) of Section 1516.

(o) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

1596.792. This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without

regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) This section shall become operative on January 1, 2014.

1596.793. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department. Child day care programs conducted by these organizations and the fees charged for that specific purpose are subject to the requirements of this

chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).

1596.794. The department shall serve as the liaison to child day care facilities for the purposes of Sections 17608 to 17613, inclusive, of the Education Code.

1596.795. (a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

1596.796. Notwithstanding any other provision of law, payments are not required to be made to any person who provides child care services and is exempt from the licensing requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) if that person either is known to have tuberculosis, or to have been convicted of any crime involving violence against, or abuse or neglect of, children.

This section shall not be construed to create an affirmative duty on any individual, government body, or other entity paying for child care to investigate the person to whom payments are being made nor shall it be construed to create any liability for failure to investigate that person.

To the extent that this section is inconsistent with federal law, it shall be inoperative.

1596.797. (a) Blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes may be performed in a child day care facility in accordance with paragraph (6) of subdivision (b) of Section 1241 of the Business and Professions Code.

(b) Nothing in this section, or in any other provision of law, including, but not limited to, Section 1241 or 2058 of the Business and Professions Code, shall require an insulin injection to be administered to any child in a child day care facility.

1596.798. (a) Notwithstanding any other provision of law, licensees and staff of a child day care facility may administer inhaled medication to a child if all of the following requirements are met:

(1) The licensee or staff person has been provided with written authorization from the minor's parent or legal guardian to administer inhaled medication and authorization to contact the child's health care provider. The authorization shall include the telephone number and address of the minor's parent or legal guardian.

(2) The licensee or staff person complies with specific written instructions from the child's physician to which all of the following shall apply:

(A) The instructions shall contain all of the following information:

(i) Specific indications for administering the medication pursuant to the physician's prescription.

(ii) Potential side effects and expected response.

(iii) Dose-form and amount to be administered pursuant to the physician's prescription.

(iv) Actions to be taken in the event of side effects or incomplete treatment response pursuant to the physician's prescription.

(v) Instructions for proper storage of the medication.

(vi) The telephone number and address of the child's physician.

(B) The instructions shall be updated annually.

(3) The licensee or staff person that administers the inhaled medication to the child shall record each instance and provide a record to the minor's parent or legal guardian on a daily basis.

(4) Beginning January 1, 2000, a licensee or staff person who obtains or renews a pediatric first aid certificate pursuant to Section 1596.866 shall complete formal training designed to provide instruction in administering inhaled medication to children with respiratory needs. This training shall include, but not be limited to, training in the general use of nebulizer equipment and inhalers, how to clean the equipment, proper storage of inhaled medication, how a child should respond to inhaled medication, what to do in cases of emergency, how to identify side effects of the medication, and when to notify a parent or legal guardian or physician. This training shall be a component in the pediatric first aid certificate requirement as provided in Section 1596.8661.

(5) For a specified child, the licensee or staff person who administers inhaled medication has been instructed to administer inhaled medication by the child's parent or guardian.

(6) Beginning January 1, 2000, any training materials pertaining to nebulizer care that licensees or staff receive in the process of obtaining or renewing a pediatric first aid certificate pursuant to paragraph (4) shall be kept on file at the child care facility. The materials shall be made available to a licensee or staff person who administers inhaled medication. This requirement shall only apply to the extent that training materials are made available to licensees or staff who obtain or renew a pediatric first aid certificate pursuant to paragraph (4).

(b) For purposes of this section, inhaled medication shall refer to medication prescribed for the child to control lung-related illness, including, but not limited to, local held nebulizers.

(c) Nothing in this section shall be interpreted to require a certificated teacher who provides day care pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code in a public school setting to administer inhaled medication.

1596.799. (a) Notwithstanding Section 1597.05 or any other provision of law, any day care center that exclusively offers a program of services for which there is no contract or agreement between any parent and the center for the regular care of any child, and for which there is no prearranged schedule of care for any child, shall not be required to do either of the following:

(1) Verify children's immunizations or tuberculosis testing.

(2) Maintain files regarding children's immunizations or tuberculosis testing.

(b) Upon admission of a child, the parent shall sign an acknowledgment that he or she understands that verification of immunizations and tuberculosis testing is not required for any child accepted in this type of program.

(c) This section shall not be construed to exempt a day care center from any other licensing requirement.

HEALTH AND SAFETY CODE

SECTION 1596.90

1596.90. No day care center for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter and Chapter 3.4 (commencing with Section 1596.70).

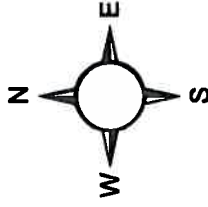
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