



Planning Commission Staff Report

July 8, 2009
Item 6.b.

- SUBJECT:** **PPOL-1, City of Pleasanton, Child Care Policy.**
Consideration of a Planning Policy regarding the definition and licensing of child care uses.
- PURPOSE:** To review and consider a proposed Planning Policy regarding the definition and licensing of child care uses.
- ATTACHMENTS:**
1. Exhibit A, Draft Planning Policy: Definition and Required Licensing of Child Care Services
 2. Exhibit B, Draft Planning Policy Option: Protection of Children Receiving Instruction, Tutoring, and Other Services and Care
 3. Exhibit C, Excerpt from the Minutes of the Human Services Commission meeting of May 6, 2009.
 4. Exhibit D, Figure 1: Locations where Child Care uses are allowed

BACKGROUND

Over the last year, the Planning Commission and City Council have reviewed several applications for conditional use permits for private, for-profit uses such as martial arts studios, tutoring, cultural education and other instruction, wherein school age children regularly attend the program every day after school and/or for extended periods during school vacations. In effect, these businesses provide after-school care and child care during school vacation periods for school-age children.

On occasion, the State Department of Social Services Community Care Licensing Division has granted these businesses an “exemption from licensure” on the grounds that the business is operating as either a “public recreation program” or a “private recreation program” and that the program meets the following criteria:

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

- For under 16 hours a week, or
- For a total of 12 weeks or less during a 12-month period, without regard to whether the weeks are consecutive.

However, staff believes that these businesses do not qualify as “public recreation programs” because the programs are not operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meet the criteria as defined in the Community Care Licensing Division’s Manual of Policies and Procedures or by the underlying code. There is no specific definition of a “private recreation program” in the Health and Safety Code. The statute citation provided by the Child Care Licensing Division (Section 1596.793) in their exemption letters refers to an exemption for recreation programs conducted: “. . .by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department.” However, the businesses that are provided these exemptions are not nationally-recognized, non-profit organizations, but rather individual business people whose qualifications and operating standards are largely unknown. Although staff has discussed these concerns with the Manager of the Bay Area Regional Office of the Community Care Licensing Division, the Division’s rationale for exempting these uses under these statutes is not clear.

The State is currently considering legislation that would exempt “heritage schools” from child day care licensing requirements. SB 379 (Huff) defines a heritage school as one that serves school-age children, offers education and tutoring in a language other than English, and offers culturally-enriching activities based on the culture or customs of a country other than the United States. Such schools would be required to maintain membership in an association that upholds health and safety standards including health screening and criminal records clearance for staff members.

Apart from State child care licensing, many of these uses are subject to a variety of Federal and State regulations. Depending on the business and the specific job description, individuals (paid or volunteer) supervising or instructing minors require criminal background checks, health screening/drug testing, vaccinations, and/or certifications in Cardiopulmonary Resuscitation (CPR) and First Aid. These requirements are independent of State childcare licensing requirements; however, the City of Pleasanton has no jurisdiction or mechanism for ensuring that the applicable laws are being followed by the operators of these businesses or their employees.

Both the Planning Commission and the City Council have expressed their concern about the safety and welfare of minors who are attending unlicensed programs for extended periods of time after school or during school vacation periods. Therefore, the City Council directed staff to work with the Human Services Commission and the Planning Commission to draft a policy addressing this issue.

DISCUSSION

The City of Pleasanton’s Youth Master Plan (adopted in 2001) recognizes the importance of readily available, high quality child care and supervised youth activities, including sports, arts instruction, dance, music and drama. The same document notes

that the demand for these services generally exceeds the supply. The Plan further states the need for outdoor recreation opportunities for youth. Therefore, staff is aware of a need to address concerns regarding a basic level of safety and welfare of participants in these programs and to understand how any changes in regulations can restrict the availability of child care programs.

Defined Uses

Staff intends that the recommended policy apply to programs which function as childcare for the families involved in the program. The challenge is that the uses are often described by the applicant as tutoring programs, martial arts studios or heritage schools and not childcare. It is only after discussion with the applicant that it becomes clear that the business functions as an after school program and/or childcare provider during school vacations.

In the definition below staff is attempting to draw a distinction between those programs where the child would attend for a few hours per week (tutoring, karate class, piano lessons, etc.) and those programs where a child attends every day after school or during school vacation periods and remains under the supervision of the business operator and their employees/volunteers. The hourly time limits described below (10 hours a week when public school is in session, and 15 hours a week when school is not in session) are somewhat subjective but based on staff's assessment that a program that lasts more than 2 hours a day after school, or for more than two days a week during school breaks, is functioning as child care.

In the recommended options below, child care is defined as follows:

Child-related services (excluding small and large family day care homes) which operate year-round in a permanent facility, including:

- Childcare centers
- Hourly (drop-in) day care
- Tutoring (including heritage schools), instruction, recreation and athletic coaching (such as martial arts, music, and art instruction) when individual children participate after school for 10 or more hours a week and/or for 15 hours a week or more during school breaks

It is intended to exclude programs operated by the City of Pleasanton or the Pleasanton Unified School District (PUSD) from the policies outlined below. The City of Pleasanton and PUSD already require background checks, health verification and/or specific certifications depending on the program and/or staff position. It is also intended to exclude summer programs run as an accessory use to an existing business such as day camps run by health clubs.

Treatment of Recent Approvals

Recent applications to the City for uses such as martial arts studios or heritage schools which require conditional use permits, and which have been granted exemptions to childcare licensing from the State have been treated on a case by case basis. The City required one applicant to apply for a State childcare license regardless of the fact that he was previously granted an exemption. Other uses have been approved subject to conditions which attempt to address issues which are pertinent to the childcare portion of the use, such as the need for:

- Criminal background checks for the director and his/her employees
- Health screenings and vaccinations for the director and his/her employees
- Appropriate First Aid and CPR training
- Preparation of a disaster plan
- Insurance for any transportation service offered
- Open space for recreation during the sessions or the programmatic equivalent
- Satisfying all Fire Department and building codes for the type of occupancy
- Appropriate rest room facilities.

The objective of this project is to adopt a policy that will address the issues above in a consistent and equitable manner for all uses that meet the child care definition.

Proposal

In response to the issues outlined above, staff proposes a new Planning Policy related to child care, that:

- Describes what child-related uses will be defined as child care for the purposes of land use planning in the City of Pleasanton; and,
- Declares that those uses defined as child care are subject to the requirements and standards imposed on child care and nursery schools in the City of Pleasanton's Zoning Ordinance; and,
- Requires that all uses defined as child care obtain a child care license from the State Community Care Licensing Division.

The requirement that programs that function as child care are licensed by the State would ensure a basic level of review of the operator of the facility, his or her employees, the program, and of the facility itself prior to the opening of the facility. It would also provide a forum to which any parent may take a complaint or concern about the facility or the staff. The State is obligated to investigate complaints against licensed facilities and its employees are trained to do so.

Classifying these uses as child care or nursery schools, will restrict the areas where these businesses can locate, compared to current practice. For example, child care centers or nursery schools are allowed with conditional use permits in only four

standard non-residential zoning districts (CR(m), CR(p), CN and P), and in a few commercial Planned Districts, as shown on Attachment 4, Figure 1. Most of the areas identified on Figure 1 are already developed. Child care and nursery schools are also allowed in R-1 (single family) and RM (multifamily) districts, as a conditional use. However, it is unlikely that the City would see a significant number of new childcare businesses in residential areas since existing homes would not meet the development regulations for child care businesses with more than 12 children (parking requirements, for example), and there is a very limited amount of vacant land zoned R-1 or RM.

Furthermore, the State's requirement for an outside recreation area will limit the suitable locations for these uses. Staff's research indicates that the Community Care Licensing Division seldom grants an exemption for this requirement, and therefore, many locations in existing buildings in developed business parks and other areas may not meet this requirement.

In addition to the above proposed policy, Planning Division staff also developed the following option which was discussed with the Human Services Commission. This option is described further in Attachment 2: Policy Option: Protection of children receiving instruction, tutoring and other services and care.

- Rather than require that all child care uses receive a State child care license, this option would require that all applicants seek a determination from the State Community Care Licensing Division as to whether its use requires a license or can be exempted from the licensing requirements. If an applicant's program is exempted, the applicant would be required to prepare written procedures and standards addressing all the issues outlined above (criminal background checks, health screenings, training, disaster planning, outdoor recreation, etc.). The standards should generally be based on those imposed by the State although equivalent requirements could be considered based on the specifics of the site or for other valid reasons. The standards would become part of the approval process. The applicant would then self-certify that all of the standards had been satisfied, with the condition that should it become apparent that the standards have not been followed, it would be grounds for revocation of any use permit and/or business license.

This option has the potential to allow more flexibility in addressing standards for this use. For example, it would be possible to approve a use which cannot accommodate an outside recreation area if it was believed that a programmatic equivalent would serve as well.

This option also raises issues of City responsibility for monitoring and enforcing the standards adopted by the uses for those businesses not licensed by the state. This is particularly important because staff turnover in this type of work is high and new employees would need to undergo background checks and meet other requirements. In the absence of state regulation, there is also the issue of to whom complaints about the business would be directed. City staff is not currently trained to conduct such

investigations and it is not clear that the City would wish to assume this responsibility. For these reasons, staff is not recommending this option.

In addition to discussing this issue with the Division of Community Care Licensing, staff also discussed these proposals with Carol Thompson, Executive Director of Child Care Links.

REVIEW BY THE HUMAN SERVICES COMMISSION

The Human Services Commission discussed this issue at its May 6 meeting (draft minutes are attached). The Human Services Commission did not take a formal action on this item although as noted below, there appeared to be consensus on some points. In summary, the Commission was supportive of Option 1 (requiring licensing) although there was some concern regarding the capacity of the Community Care Licensing Division and the cost and lead-time for licensing for child care businesses. The Commission expressed concern that Option 2 would expose the City to liability related to any incidents at childcare businesses. Parents may also have expectations about the involvement of the City in resolving any complaints about care or the facilities. A third option (if businesses are exempted from licensing requirements, requiring such businesses to apply to the state each year to either be licensed or exempted) was discussed briefly, but Commissioners were doubtful that this process would add value or provide any protection to children.

Two ideas that appeared to be supported by a majority of the Commissioners were as follows:

- Work with an agency such as Child Care Links to provide additional resources to parents to make informed decisions about the appropriate after-school and school vacation care for their children. This may include providing additional information via websites, handouts, or parent education classes on what to look for in a childcare program and what questions to ask operators of child care businesses, and outreach to parents of school-age children to make them aware of these resources.
- Require child-care operators to disclose (on a standard form, designed by the City) to parents whether or not the business has been licensed by the State Community Care Licensing Division, prior to the parent/guardian registering a child in the program. The City would also require that this information is displayed in a visually prominent location at the place of business.

ENVIRONMENTAL REVIEW

This planning project has been deemed exempt from CEQA review according to the exemption provided by CEQA Guidelines Sec. 15061(b)(3).

PUBLIC NOTICE

Notice of consideration of this agenda item was sent to 65 addresses, including existing businesses in Pleasanton who may be affected by this policy and several prospective applicants who have expressed an interest in this project.

STAFF RECOMMENDATION

Staff recommends that the Commission take the following actions:

1. Take public comment and provide feedback on the proposed Planning Policy: Definition and Required Licensing of Child Care Services

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