

C. How Would a Purchaser or Renter Know About any Covenants or Restrictions?

Covenants or similar restrictions can often be found in a number of places; therefore, when considering renting or purchasing property, it is important to search thoroughly all documents pertaining to the property.

1. Deed to the Property

Covenants are frequently recorded in a document that relates to the property, such as the title or deed.

2. Prior Deeds to the Property

The restrictions may be recorded in one deed, and then referred to in subsequent documents or deeds. For example, a deed may state that the property is subject to restrictions recorded in a previous deed. Thus, a purchaser would find the restrictions by researching prior deeds to the property, which can be located in the county recorder's office. A title search by a title company should also reveal any restrictions contained in prior deeds.

3. Subdivision or Development "Declaration"

The restrictions imposed by the developer are contained in a "declaration," which describes covenants that govern the project.⁶ Declarations are recorded in the county recorder's office⁷ and can be obtained by requesting a copy from the developer or the county recorder. A copy of a report describing subdivisions containing five or more units can be obtained from the California Department of Real Estate.⁸ A title search by a title company should also reveal any restrictions contained in the subdivision plan.

4. Bylaws of the Property Owners' Association

Many deeds or declarations state that the property shall be subject to the rules devised by the property owners' association, which means that a purchaser could locate restrictions that apply to the property in the association's bylaws or rules.

5. Other Documents Related to the Property

In some cases, a court may enforce a covenant that is not recorded in a deed, provided the court determines that the buyer had sufficient notice of the covenant.⁹

D. Limits on the Enforceability of Covenants

There are some significant limits on the enforceability of covenants. Covenants in violation of local, state, or federal laws are unenforceable. For example, covenants restricting the sale or lease of property on the basis of race, sex, ancestry, or disability are illegal and unenforceable because the covenants violate anti-discrimination laws and/or state and federal constitutions.¹⁰ Other covenants may be unenforceable because they violate public policy.¹¹ Still others may be

unenforceable because the circumstances surrounding the creation of the covenant have changed so significantly that the covenant no longer has the desired result.¹² Finally, there may be specific state laws that render a covenant unenforceable. For example, as discussed below, state law in California renders any covenants that purport to restrict or limit family child care in residential property unenforceable.

II. Restrictive Covenants and Family Child Care Homes

A. Restrictive Covenants

Family child care homes are located in residential areas and operate out of a provider's home, as opposed to child care centers which are not required to be located in residential areas and do not operate out of a provider's home. Because family child care homes are located in residential areas, the provision of child care is often contrary to covenants attached to residential structures. There are a variety of restrictive covenants that impact family child care homes, only a few of which are discussed below.

A common covenant in residential neighborhoods or complexes is a "residential use only" covenant. An example of language used to create such a covenant would be:

No lot or plot in whole or in part shall be used for anything other than residential purposes. No trade, traffic, or business of any kind, whether professional, commercial industrial, mining or manufacturing, shall be engaged in or carried on upon said property or any part thereof...

Another common covenant that might affect family child care is a prohibition against business or commercial use of a home through general language such as:

No unit shall be used for business or commercial purposes.

Alternatively, the covenant might be more specific, stating:

No industry, business, trade, occupation of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, exploitation or otherwise, shall be conducted, maintained or permitted in any part of the condominium or in any unit.

Some communities even include outright prohibitions on family child care, with covenants that state:

"No day care" or "No unit shall be used for child care."

Family child care providers may be surprised or concerned to discover that the deed to their home contains a covenant prohibiting "business uses" or "commercial uses," or restricting the use to "residential use only." A property owners' association or neighbor may attempt to invoke

this type of covenant to force a family child care provider to stop operations. In some jurisdictions, courts have refused to enforce "residential use only" covenants against providers because family child care is a valuable social service and/or because the use was so similar to a residential use that the covenant did not apply.¹³ In other jurisdictions, courts have enforced the covenants, forcing family child care providers out of business.¹⁴

B. Enforceability of Restrictive Covenants

California law limits the power of neighbors or property owners' associations to use covenants to restrict or prohibit family child care.¹⁵ Citing the extreme importance of family child care and the need for children to be cared for in home-like settings, in 1981 the state legislature passed Health and Safety Code Section 1597.40(c), which reads in relevant part:

[E]very restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

Under section 1597.40, covenants such as those limiting the use of property to "residential use only" or prohibiting business or commercial uses are not enforceable against family child care homes in California. The provider still must comply with the other covenants and rules of the property owners' association.

The constitutionality of section 1597.40 was tested in *Barrett v. Dawson*, where the court upheld the statute. The ability to apply the statute retroactively was also contested. In particular, a tenant operated a family child care home in a house that had a restrictive covenant recorded in 1968. The covenant stated that no lot in the tract "shall be used for the conduct of any trade, business, professional or commercial activity of any kind or nature whatsoever."¹⁶ The property owners' association claimed that the statute should not apply retroactively to restrictive covenants created before 1981, when the legislature passed the law protecting family child care. The court disagreed and held that covenants limiting family child care were void, regardless of when they were created.¹⁷

The law protecting family child care from restrictive covenants has several implications for providers. First, no private agreement can limit the right of a family child care provider to operate out of his or her home. A property owners' association could still attempt to sue a provider for the operation of a family child care home, but such a suit would be unsuccessful due to the unenforceability of the covenant.

Second, property owners' associations cannot impose conditions that directly or indirectly limit the family child care business. Although none of these scenarios have been tested in court, some examples might include:

- A property owners' association should not be able to require a family child care provider to purchase liability insurance, since this condition might limit the provider's ability to use the property as a family child care home.

However, it is important to note that California Health and Safety Code Section 1597.531 allows property owners' associations to require that a family child care provider add the association as an additional insured party if (1) the provider already has insurance, (2) the association makes a written request to be added, and (3) the association pays any additional premium.

- A property owners' association also should not be able to require the provider to pay additional association dues, fees, or surcharges that are not charged to all association members, as this might also limit the provider's ability to use the property as a family child care home.
- A property owners' association should not be able to impose square footage, setback, or architectural design requirements or restrict the use of common facilities for family child care providers in a way that is different than the requirements or restrictions imposed on all other members of the association. For example, a property owners' association in a gated community may not restrict the number of guests the provider has coming through the gate (a common facility) each day, as this could limit the provider's ability to use his or her property for family child care.
- A property owners' association should not be able to impose staffing or health and safety requirements on family child care providers. Family child care is regulated by the state, and property owners' associations may not impose additional requirements.
- Property owners' associations should not be able to require information about the children or parents of the children in the provider's care.
- Property owners' associations should not be able to require that the provider indemnify the association, as this might entail a large financial burden were the association's negligence to result in a finding of liability for costs associated with an injury.
- Property owners' associations should not be able to require waivers of liability from the provider. Otherwise, any accidents that occur due to the association's negligence would not be covered by the provider's insurance policy, and with a waiver of liability given to the association, the provider would be forced to pay out of pocket for any resulting damages.

The protection against covenants that restrict or prohibit family child care extends to providers who rent their homes in common interest developments or other properties subject to restrictive covenants. Just as a covenant may not be enforced against a property owner who is also a family child care provider, covenants may not be enforced against a tenant who operates family child care.¹⁸ Tenants have additional protection against limits or prohibitions on family child care imposed by landlords, which is discussed in Chapter 3 of this manual.

III. Strategies For Overcoming Restrictive Covenants in the Family Child Care Home Context

LINCC advocates can employ a variety of strategies to ensure that providers in their communities are not restricted or prohibited from providing family child care by property owners' associations or neighbors. In many cases, advocacy can resolve the problem before it escalates into a costly legal battle. However, advocates may also want to develop resources for providers who need legal assistance.

A. Ensure that New Housing Developments Do Not Contain Covenants that Restrict or Prohibit Family Child Care

The plans for new developments – including any proposed restrictions that might limit or prohibit family child care – are available to members of the public in a number of ways, depending on the type of development. With some research, LINCC advocates can identify any potentially illegal or problematic restrictions and work to eliminate them before problems arise.

Developers of new subdivisions must submit copies of proposed plans and restrictions to the California Department of Real Estate, which reviews the plans to ensure that they do not contain illegal restrictions. Unfortunately, regulations do not specifically address restrictive covenants in the family child care context, so the Department does not generally seek out these restrictions in its reviews. However, if a LINCC advocate were to bring a blatantly illegal restriction to the Department's attention, the Department could force the developer to change its plans to conform with state law. This tactic might be successful only when restrictions specify "no child care," however, since a developer could argue that broader "residential use only" restrictions simply would not be enforced against family child care providers.

Developers in "special areas," such as Redevelopment Areas, must submit plans to the government agencies with oversight authority. Often, these plans are available for public viewing and members of the public have the opportunity to comment. Advocates may request a copy either informally or under the Public Records Act.¹⁹ A sample Public Records Act request letter is printed in Appendix F.

Once they obtain a copy of the plan, LINCC advocates can point out that any restrictions on family child care are invalid under state law and thus should not be incorporated into special area plans. If the developer or government agency is unresponsive, it may be useful to coordinate with the local child care advocacy community, such as providers' associations and parent groups, to show that family child care has an active constituency that local planners should not ignore.

B. Work with Developers to Include Language Explicitly Exempting Family Child Care from "Residential Use Only" Covenants in Plans for New Developments

A developer who understands both the state law regarding family child care and the value of family child care to a planned community may be willing to go even further and include

language in its plans indicating that family child care is not subject to the “residential use only” covenants. Such language might read:

No lot or plot in whole or in part shall be used for anything other than residential purposes. Because California Health & Safety Code §1597.43(a) provides that family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses, this section shall not apply to small and large family child care homes licensed in accordance with the California Child Day Care Act, Cal. Health & Safety Code § 1596.70 *et seq.*

Although this type of provision does not change the legal status of family child care, which is already protected by law, it may make fighting a property owners’ association easier. Since it makes explicit the association’s lack of power to stop the family child care home, the provider’s ability to operate does not depend on the association’s reading and understanding of state law. This may eliminate unnecessary battles between providers and property owners’ associations.

C. Help Family Child Care Providers Negotiate with Property Owners’ Associations

Even though California law is clear that covenants may not be used to restrict family child care, property owners’ associations continue to attempt to enforce restrictive covenants, either out of ignorance of the law or a blatant disregard for providers’ rights. Some providers may lack the skills, confidence, or knowledge they need to press effectively for their rights. Others may be scared, threatened, or afraid of engendering bad relations with their neighbors.

LINCC advocates can effectively assist family child care providers and the family child care community both to develop the tools required to negotiate successfully with a property owners’ association and to assist with actual negotiations, if appropriate. Listed below are a number of strategies that LINCC advocates may find useful. Many of these strategies were discussed in Chapter 3 as well, but they are revisited here for convenience’s sake.

1. Educate Family Child Care Providers and Other Family Child Care Advocates about Their Rights

Many providers are unaware or unclear about their rights to operate a family child care home. Once providers have the appropriate information, they may feel capable of advocating on their own behalf. LINCC advocates can also develop the capacity of family child care organizations to advocate for each other, as well as to increase the ability of licensing officials to assist family child care providers.²⁰

2. Help Family Child Care Providers Educate Their Property Owners’ Associations and Maintain Good Relations with Their Neighbors

Some property owners’ associations oppose family child care homes out of ignorance or misunderstanding of the nature of family child care. Neighbors may imagine hordes of children

making a constant racket at unreasonable hours and being picked up by parents who create large traffic jams on their street. LINCC advocates can assist providers in de-escalating the situation by helping them gather and present information about family child care and the real (as opposed to imagined) impact a family child care home has on a residential community. They can also encourage providers to implement practices that will help them maintain good relations with their neighbors. This may allay fears and make the home more welcome in the neighborhood, rendering the prospect of legal action against or harassment of the provider less likely. In some cases, the provider can present this information to the property owners' association. In other cases, the LINCC advocate may want to step in and help the provider create a friendlier environment for the family child care home. In particular, there are specific concerns that associations and neighbors often have that can be addressed by increased communication and education amongst all of the affected parties:

- a) *Liability:* Frequently a major concern of property owners' associations is the potential for increased association or neighbor liability for an injury sustained by children or their parents. LINCC advocates can suggest that providers purchase liability coverage and offer the property owners' association additional coverage (at the association's expense). In this way, both the provider and the association are covered for injuries arising in the course of the operation of the family child care home.
- b) *Number of children:* Neighbors may imagine a full-scale school or child care center operating next door. It may help to share the licensing regulations regarding the number of children allowed in a family child care home. It may also help if the provider tells the property owners' association exactly how many children she is licensed to care for, and how many will be in her care.
- c) *Parking:* Neighbors may worry about parking, especially if they imagine that all the children will arrive and leave at the same time. LINCC advocates can help providers show their neighbors that the impact on parking is minimal by encouraging the provider to keep a log of when children are dropped off in a car. If providers stagger the children's schedules in some way, it should be easy to demonstrate that parents picking up children will not affect parking significantly. Additionally, if siblings are picked up together or carpools are used, the impacts can be further minimized. If the family child care home is not yet operating, providers might get useful data from a similarly-sized family child care home. It may also be helpful for providers to make off-street parking available when possible and to encourage the parents to respect the neighbors by not double-parking or pulling into neighbors' driveways or parking spaces.
- d) *Noise levels:* LINCC advocates can help providers point out that a small family child care home generates a noise level similar to that of other family homes in the area. LINCC advocates can also suggest that providers create a schedule that accommodates the needs of neighbors by, for example, not allowing the children to play outside early in the morning.

- e) *Hours of operation:* Neighbors may be concerned about the hours that a family child care home will operate, imagining the home to be similar to a residential care facility in which clients live full time. It may help to point out that licensing regulations limit the time that children may spend in the family child care home. The provider may also want to give the property owners' association or neighbors a copy of his or her schedule, so those affected can understand when to expect children and their parents in the neighborhood.
- f) *Health and Safety:* Members of the property owners' association may be unaware that family child care is not only legal and protected, but is regulated by the state. Information regarding the licensing system may allay fears regarding children's safety, as well as demonstrating that the property owners' association need not consider imposing additional health and safety-type restrictions.

4. Help the Provider Explain His or Her Rights to the Property Owners' Association

In some cases, educating the property owners' association and attempting to allay neighbors' concerns may be insufficient, and the association will persist in threatening legal action or otherwise harassing the provider. In these situations, it may be necessary to help the provider explain to the association and its attorney that any covenants that restrict or prohibit family child care are unenforceable under California Health and Safety Code Section 1597.40. This assistance could be in the form of a letter written on behalf of the provider or a formal or informal meeting with the association. A sample letter is printed in Appendix E.

D. Develop Free or Low-Cost Legal Resources for Providers Who Require Legal Assistance in Exercising Their Rights

Some property owners' associations may be so unwilling to allow family child care that they insist that family child care homes not operate, even though they have been informed of providers' rights to operate notwithstanding any restrictive covenants. In some cases, they may sue the providers in an attempt to force them to close. In other cases, they may simply harass them so much that operating a family child care home no longer seems worthwhile. Especially if the providers have few financial resources with which to fight a property owners' association, it may be much easier simply to shut down. In these situations, LINCC advocates can help preserve the supply of child care by helping the providers obtain legal assistance for free or at low cost. There are a number of possible sources of legal representation, although LINCC advocates may have to try several before finding the appropriate lawyer.

1. Legal Services

Government-funded legal services programs (sometimes called legal aid or neighborhood legal assistance, among others) offer free legal assistance in civil cases to low-income individuals.²¹ Disputes with property owners' associations are generally not the type of case legal services programs accept. However, LINCC advocates can highlight for program staff the importance of protecting the family child care supply both to the local economy and to the low-income families the program serves. The program might revise its case acceptance policy to accept this type of

case, although as a rule the family child care provider would have to meet legal services income eligibility guidelines, which tend to be very low. In some cases, however, it may be possible to work with the program to develop specialized funding to serve providers who do not meet legal services income eligibility guidelines. The Child Care Law Center can assist LINCC advocates in establishing relationships with legal services programs, and may be able to provide technical assistance to legal services programs that work with or represent providers.

2. Volunteer Legal Services Panels

Some county bar associations in California operate volunteer legal services panels. Attorneys volunteer their time to assist low-income clients *pro bono* (for free). Again, LINCC advocates may be able to bring this type of case to the attention of county bar personnel who assign cases for *pro bono* assistance, so as to raise awareness of the need for representation in family child care restrictive covenant cases. It may even be possible for a LINCC advocate to arrange for a training of local attorneys on the laws specific to family child care, so that they are prepared when a case arises. Like legal services, however, volunteer legal services panels are often limited to low-income clients, so the provider may have to meet income eligibility requirements.

3. Economic Development Legal Clinics

Legal clinics that focus on economic development issues may be able to assist low-income microenterprises to establish their businesses and help them to navigate relevant statutory and regulatory provisions.²² Family child care homes, in addition to small centers, are microenterprises and as such may be eligible for assistance if the providers are low-income.

4. Law Firms

Many law firms offer *pro bono* legal assistance. Again, however, LINCC advocates may need to point out to law firms the extreme importance of licensed child care to the community, and explain how threats from property owners' associations disrupt that supply, even though the legislature has limited the associations' power over family child care providers. While individual providers may be intimidated by the thought of asking a law firm for free legal assistance, LINCC advocates can help smooth the way, either in advance or when a particular case arises.

5. Attorney Associations

Children's advocates or associations of women lawyers may have a special interest in these cases.

6. Law Enforcement

In some extreme cases, neighbors or members of a homeowners' association may try to intimidate or harass the provider or the parents of the children in his or her care. If this harassment at any point becomes dangerous or represents a serious threat to the safety of the

provider, his or her family, or the children, the incident should be reported to local law enforcement.

IV. Restrictive Covenants and Strategies for Overcoming Restrictive Covenants in the Child Care Center Context

Child care centers are often located in commercial developments that may have restrictive covenants limiting the types of businesses that can be operated on the property. For example, the deed or development plan for the area may state that the property may be used only for “office or retail purposes.” Since child care is neither of these, the restriction effectively bars a child care center. Another restriction occasionally found on commercial property might state that the owner of the property “shall not lease any portion of the structure to a social service provider.” If child care is defined as a “social service,” then the restriction might bar the use of the property as a child care facility.

California law does not protect child care centers from restrictive covenants in the same way that it protects family child care. Since there are no special protective statutes, child care centers might have to utilize other legal or political tactics to overcome a restrictive covenant.

A. Encourage Developers Not to Include Covenants that Restrict Child Care in New Developments

To help create more space for child care centers, LINCC advocates should monitor plans for new commercial developments. It is often possible to obtain copies of the restrictions for new developments, and it may be possible to convince the developer not to insert covenants that restrict child care, at least in the portions of the development where a child care facility would be appropriate. LINCC advocates can help developers understand that the availability of on-site child care can enhance the value of office or retail space for potential buyers or renters.

If the area is in a special development zone, such as a redevelopment area, advocates can request a copy of any restrictive covenants from the agency overseeing the project. Here, political pressure may be useful, especially since zones subject to special development rules are usually located in low-income or blighted areas which often have a very high need for child care and other social and educational services.

B. Help Child Care Providers Negotiate with Owners or Developers to Eliminate Covenants that Restrict Child Care

Covenants in common interest developments can be amended or eliminated either by a procedure set forth in the original documents governing the development or by procedures described by state law.²³ This might be useful if an existing covenant restricts child care in a building or development that would be well-suited for a child care facility.

For example, assume a large residential complex with a few stores has a covenant restricting use to “retail or residential use only.” However, a downstairs unit originally designed to be a store

has access to a large yard, and the unit could easily be converted to a small child care center. With the approval of the other property owners, the covenant as it affects the potential child care site could be amended to read "retail, residential or licensed child care facility use only." In such circumstances, the owners may be willing to lift the restrictions if asked. LINCC advocates can identify potential sites and help child care providers approach the developer or owners about amending the covenants.

C. Connect Child Care Providers with Free or Low-Cost Legal Assistance to Help Them Clear the Property of Covenants That Restrict Child Care

If a provider is suddenly faced with an action to close an existing facility due to restrictive covenants, LINCC advocates can help by connecting the provider with free or low-cost legal resources. A number of legal arguments can be raised against a restrictive covenant—for example, that (1) the neighbors waited too long to enforce it, (2) it violates public policy, (3) the neighbors have "unclean hands" (meaning that they engaged in activities forbidden by the covenants and thus should not themselves be able to enforce a covenant against the child care provider), or (4) circumstances have changed so significantly that the restriction no longer protects the property.²⁴ An attorney can help a child care provider assess the restrictive covenants that may exist, and possibly bring an action asking the court to declare the covenants unenforceable. Although such cases may be hard to win, they may occasionally succeed. Of course, it is also important to note that child care providers should not purchase or lease property for use as a child care facility until their attorney is confident that any restrictive covenants can be eliminated, as this process may be time consuming and expensive.

For information on connecting the provider with legal resources, see the earlier discussion of connecting family child care providers with law firm *pro bono* programs or volunteer legal services panels.

VI. Covenants to Encourage or Require Child Care in Developments

Not all restrictive covenants limit child care. In fact, one way to ensure that new developments contain a child care facility is to adopt a restrictive covenant requiring that property be used as a child care facility. For example, a covenant could state:

- "This property shall be used for child care purposes only;"
- "1% of the total square footage of this development shall be designated for licensed child care;" or
- "This unit shall be used as a family child care home."

LINCC advocates can encourage local developers to include covenants requiring child care in their development plans. LINCC advocates can demonstrate to developers how selecting the option of building a facility specially designed and designated for child care can benefit both their development and the community as a whole.²⁵ In some communities, developers must

designate a certain percentage of new developments for child care facilities or pay money into a child care fund.²⁶ Developers' fees can be a way to increase child care. However, in some communities, due to inconsistencies in both the assessment and collection systems, it appears that not all of the appropriate fees are collected²⁷. Therefore, in addition to attracting support for developers' fees, advocates should monitor the fee collection process to ensure that fees are actually being paid

Some building projects may be funded with public dollars or subject to oversight by a special governmental agency, such as a redevelopment agency. In these cases, organizing political pressure to include child care covenants in the development can be extremely effective. LINCC advocates can build coalitions with other providers of social services to make sure that the facilities community's needs are included in new developments.

VII. Conclusion

California law provides protection for family child care homes. Many neighborhood associations are supportive of family child care, while others are unaware of the importance of family child care to the community. On occasion, neighborhood associations may try to get around the law by devising restrictions that indirectly place a burden on child care providers, such as restrictions on how many vehicles can enter a gated community during the day. Such restrictions are not permitted under the law. By educating the community, advocates can help child care providers enforce their rights.

Where more than education is necessary, advocates can lead child care providers to local organizations that may be able to provide assistance in bringing a lawsuit. Advocates can also take a variety of proactive steps to eliminate burdens on child care, such as by helping providers communicate with their neighbors before a family child care home is established so that neighbors are clear on how such a facility will impact their neighborhood. Finally, advocates can help lesser-protected child care centers by encouraging developers to set aside space for such facilities and to eliminate restrictive covenants that adversely affect the child care supply. A variety of advocacy skills will help to eliminate both direct and indirect barriers to increased child care in the community.

¹ See JOSEPH WILLIAM SINGER, PROPERTY LAW: RULES, POLICIES, AND PRACTICES 365-67 (1993).

² CAL. CIV. CODE § 1354(a)-(b) (West Supp. 2001).

³ CAL. CIV. PROC. CODE § 383 (West Supp. 2001). For purposes of simplicity, this article will refer to "homeowners' associations," "condominium owners' associations," "townhouse owners' associations," and all other groups designated or empowered to enforce restrictive covenants under the generic term "property owners' association."

⁴ See *Duffey v. Superior Court of Orange County*, 4 Cal. Rptr. 2d 425 (Ct. App. 1992).

⁵ CAL. CIV. CODE § 1460 (West 1982).

⁶ CAL. CIV. CODE § 1353 (West Supp. 2001); see also *Citizens for Covenant Compliance v. Anderson*, 906 P.2d 1314, 1329 (Cal. 1995).

⁷ CAL. CIV. CODE § 1353 (West Supp. 2001).

⁸ For information about obtaining a subdivision plan from the California Department of Real Estate (DRE), visit www.dre.ca.gov or contact the office of the DRE directly. In Northern California call (916) 227-0813, fax (916)

227-0842, or write PO Box 187005, Sacramento, CA 95818-7005. In Southern California call (213) 576-6983, fax (213) 576-6942, or write 320 West 4th Street, Suite 350, Los Angeles, CA 90013-1105.

⁹ Riley v. Bear Creek Planning Committee, 551 P.2d 1213, 1221 (Cal. 1976).

¹⁰ CAL. CIV. CODE § 53 (West 1982); see, e.g., Shelley v. Kraemer, 334 U.S. 1 (1948).

¹¹ Hotz v. Rich, 6 Cal. Rptr. 2d 219 (Ct. App. 1992).

¹² See, e.g., Downs v. Kroeger, 254 P. 1101 (Cal. 1927).

¹³ See, e.g., Beverly Island v. Zinger, 317 N.W.2d 611 (Mich. Ct. App. 1982).

¹⁴ See, e.g., Walton v. Carignan, 407 S.E.2d 241 (N.C. Ct. App. 1991). For a national survey of the validity of restrictive covenants pertaining to child care, see Barbara J. Van Arsdale, *Children's Day Care Use as Violation of Restrictive Covenant*, 81 A.L.R. 5th 345 (2000).

¹⁵ CAL. HEALTH & SAFETY CODE § 1597.40 (c) (West 2000); see also Chapter 3, *supra* note 23.

¹⁶ Barrett v. Dawson, 71 Cal. Rptr. 2d 899, 901 (Ct. App. 1998).

¹⁷ *Id.* at 90.

¹⁸ See, e.g., *id.* The family child care provider in that case was a tenant.

¹⁹ California Public Records Act, CAL. GOV'T CODE §§ 6250-70 (West 1995 & Supp. 2001).

²⁰ The Licensing Child Care Advocates can, in some cases, advocate on behalf of a family child care provider. See, Cal. Health & Safety Code §1596.872(a&b).

²¹ For a listing of legal services in California, see Public Interest Clearinghouse, *Directory of California and Nevada Legal Services Programs*, available at www.pic.org/resx/direclsp.htm.

²² For a description of various legal services that focus on economic development assistance, see Stephanie Upp et al., *Child Care and Community Economic Development: Critical Roles for Legal Services*, CLEARINGHOUSE REVIEW, May-June 2000, at 3 (2000).

²³ CAL. CIV. CODE § 1355 (West Supp. 2001).

²⁴ Downs v. Kroeger, 254 P. 1101 (Cal. 1927).

²⁵ In an "Agreement for Working Capital Funding and Operation of Child Care Center (Yerba Buena Gardens)" between the Redevelopment Agency of the City and County of San Francisco and the South of Market Child Care, Inc., South of Market Child Care, Inc. agrees to operate child care center at the Yerba Buena Gardens. Article 7.01 describes what is a permitted use for the Yerba Buena Center:

Permitted Use: The Operator will accept responsibility for and will occupy the Center in accordance with all the terms and conditions of this Agreement. It may be used only as a first-class child care center with ancillary and incidental uses directly related to the Center's primary use, such as emergency "drop in" child care services, educational, fundraising, meeting and related events' provided however, that in the case of any ancillary or incidental use, such use shall be consistent with the primary use. 'Ancillary use' specifically includes rental for commercial or other similar uses, but will be permitted only if and to the extent such use does not interfere with the primary use of the Center for child care.

²⁶ SAN FRANCISCO, CAL., PLANNING CODE § 314.4 (adopted August 17, 2001).

²⁷ OFFICE OF THE CONTROLLER, CITY AND COUNTY OF SAN FRANCISCO, REVIEW OF SAN FRANCISCO'S DEVELOPMENT IMPACT FEES 2-9 (2001).

GLOSSARY

Allowed Use: A land use that is permitted in a zoning district without the need to obtain special permission from a local government authority.

Child care centers: Any child care facility of any capacity, other than a family child care home, in which less than 24-hour per day non-medical care and supervision are provided to children in a group setting. CAL. CODE REGS. Title 22, § 101152 (2001).

Child Care Resource and Referral Agency: An agency that helps parents find suitable child care, tracks the supply and demand of child care, trains providers on the best way to establish and maintain their businesses, and educates the community on child care issues. California Child Care Resource & Referral Network, *What is a Child Care Resource and Referral Agency?* at http://www.rnetwork.ezpublishing.com/rnet/about_us/1046992306.php (last visited May 9, 2003). See, CAL. EDUCATION CODE §§8210-8216 (2002).

Common Interest Development: A community apartment project, condominium project, planned development, or stock cooperative. CAL. CIV. CODE § 1351 (West Supp. 2003).

Conditional Use: A use that, while permitted, must be approved and may be subject to special requirements by the local government. A special use is one that, if unrestricted, may not be appropriate throughout the zoning district, but if controlled as to number, area, location, or relation to the neighborhood, would not be detrimental to public health, safety, or general welfare. See, CAL. GOVERNMENT CODE §65901 (2002).

Environmental Impact Reports: A report of a proposed development project's potential impact on the environment with suggestions on how to mitigate adverse impacts and possible alternatives to the project. CAL. CODE REGS. Title 14, §§15000-15387 (2001).

Existing Conditions Documents: Documents that describe current conditions in a community in a variety of areas such as density, appearance, traffic patterns, economic vitality, safety issues, and natural resource preservation.

Family child care home: "[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...." CAL. HEALTH & SAFETY CODE § 1596.78(a) (West 2000).

General Plan: A document that provides a statement of policies, objectives, proposals, etc. for the development of a city or county. See, CAL. GOVERNMENT CODE §65300, et.seq. (West Supp. 2003).

Large family child care home: A family child care home that provides care for 7 to 14 children. CAL. HEALTH & SAFETY CODE § 1596.78(b) (West 2000).

Ordinance: A law or regulation adopted by a local government authority, usually a city or county.

Restrictive covenants: Agreements that require individuals to use or refrain from using their property in a certain way. Restrictive covenants are also called mutual equitable servitudes; implied reciprocal negative servitudes; covenants, conditions, and restrictions ("CC&Rs"); or deed restrictions.

Small family child care home: A family child care home that provides care for 8 or fewer children. CAL. HEALTH & SAFETY CODE § 1596.78(c) (West 2000).

Use Permit Process: The discretionary and conditional review of an activity, function, or operation on a site or in a building or facility. If, at the end of review, the request is granted, a permit is issued. Administrative Use permits are approved in-house rather than by a judicial or executive body such as a Planning Commission, Zoning Board of Adjustments, or City Council. Conditional Use permits may impose extra conditions that accompany the application and may require approval by a judicial or executive body. Both types may require public notice and/or hearings in certain circumstances.

Variance: A variation in the zoning requirements that is granted when applying the zoning code to property that is unusual or unique would result in unnecessary hardship. The variance allows a reasonable use of the building, structure, or property that otherwise would not be allowed. It usually applies to deviations from the dimensional requirements of the ordinance (e.g., building height or yard space) but may not permit a use of land that is otherwise prohibited in that zoning district. CAL. GOV'T CODE § 65906 (West 1997).

Zoning District: A designated section of a city or county for which prescribed land use requirements, density limits, and building standards are uniform, such as Single Family Residential, Industrial, or Commercial.

APPENDIX A: SELECTED CALIFORNIA STATUTES AND MUNICIPAL ORDINANCES

Selected California Statutes (State Laws)

NOTE: BEFORE CITING OR USING THESE STATUTES, MAKE SURE THAT THE STATUTES HAVE NOT BEEN AMENDED OR REPEALED.

CAL. GOV'T CODE § 65300

Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. Chartered cities shall adopt general plans which contain the mandatory elements specified in Section 65302.

CAL. GOV'T CODE § 65302

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

- (a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall designate, in a land use category that provides for timber production, those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part I of Division 1 of Title 5.
- (b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.
- (c) A housing element as provided in Article 10.6 (commencing with Section 65580).
- (d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters,

harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover:

- (1) The reclamation of land and waters.
- (2) Prevention and control of the pollution of streams and other waters.
- (3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.
- (4) Prevention, control, and correction of the erosion of soils, beaches, and shores.
- (5) Protection of watersheds.
- (6) The location, quantity and quality of the rock, sand and gravel resources.
- (7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

- (1) Highways and freeways.
- (2) Primary arterials and major local streets.
- (3) Passenger and freight on-line railroad operations and ground rapid transit systems.
- (4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.
- (5) Local industrial plants, including, but not limited to, railroad classification yards.
- (6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards

known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision

CAL. GOV'T CODE § 65303

The general plan may include any other elements or address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city.

CAL. GOV'T CODE § 65351

During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

CAL. GOV'T CODE § 65852

All such regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones.

CAL. GOV'T CODE § 65860

- (a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:
 - (1) The city or county has officially adopted such a plan.
 - (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.
- (b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

- (c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.
- (d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of the city by July 1, 1982.

CAL. GOV'T CODE § 65906

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.

CAL. HEALTH & SAFETY CODE § 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.

CAL. HEALTH & SAFETY CODE §1597.40

- (a) It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.

- (b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.
- (c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.
- (d)(1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.
- (2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.
- (3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.
- (4) Notwithstanding any other provision of law, commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

CAL. HEALTH & SAFETY CODE § 1597.43

The Legislature finds and declares all of the following:

- (a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.
- (b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a "congregate care facility" means a "residential facility," as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the

institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

- (c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities.

CAL. HEALTH & SAFETY CODE § 1597.44

A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than two infants are cared for during any time when more than six children are cared for.
- (c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

CAL. HEALTH & SAFETY CODE § 1597.45

All of the following shall apply to small family day care homes:

- (a) The use of single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.
- (b) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home.
- (c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.
- (d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

CAL. HEALTH & SAFETY CODE § 1597.46

All of the following shall apply to large family day care homes:

- (a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:
 - (1) Classify these homes as a permitted use of residential property for zoning purposes.

- (2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, if any, or if there is no zoning administrator by the person or persons designated by the planning agency to grant such permits, upon the certification without a hearing.
- (3) Require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, if any, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process. Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle such use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100 foot radius of the exterior boundaries of the proposed large family day care home. No hearing on the application for a permit issued pursuant to this paragraph shall be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any of the appeal.
- (b) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.
- (c) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.
- (d) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Administrative Code. These standards shall apply uniformly throughout the state and shall include, but not be limited to: (1) the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal; (2) specification as to the number of required exits from the home; and (3) specifications as to the floor or floors on which day care may be

provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.

- (e) No later than April 1, 1984, the State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement the provisions of this section.

CAL. HEALTH AND SAFETY CODE § 1597.465

A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
- (c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

CAL. HEALTH & SAFETY CODE § 1597.531

- (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to the standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.
- (b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share

common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

- (1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.
 - (2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.
 - (3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.
- (c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section 1351 of the Civil Code.

Selected Municipal Ordinances

NOTE: THESE ARE NOT INCLUDED HERE AS MODELS; THEY ARE SIMPLY ILLUSTRATIVE. BEFORE CITING OR USING THESE ORDINANCES, MAKE SURE THAT THEY HAVE NOT BEEN AMENDED OR REPEALED.

CITY OF ALAMEDA, CAL., MUNICIPAL CODE ch. 30, § 30-2

Community care facility shall mean any facility, place or building which is maintained and operated to provide non-medical residential care, including but not limited to family day care homes and residential care facilities.

Family day care home shall mean a community care facility for children which provides care for less than twenty-four (24) hours a day and which also serves as the residence of the operator.

REDWOOD CITY, CAL., ZONING ORDINANCE § 2.21.1

NOTE: THIS ORDINANCE WAS ENACTED PRIOR TO CALIFORNIA STATUTORY AMENDMENT OF 1996 WHICH ALLOW UP TO 8 CHILDREN IN SMALL FAMILY CHILD CARE HOMES AND UP TO 14 CHILDREN IN LARGE FAMILY CHILD CARE HOMES IF CERTAIN CONDITIONS ARE MET.

- a. Child Day Care Facilities. A facility which provides non-medical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living, or for protection of the individual on less than a 24 hour basis. Child Day Care Facilities includes Day Care Centers and Family Day Care Homes hereinafter defined.
- b. Day Care Center. Any child day care facility other than a small or large family day care home, including infant centers, preschools, and extended day care facilities subject to the following:
 - (1) Day Care Centers located in the "RH", "R-1", "R-2", and "R-3" Zoning Districts shall only be permitted if the facility is in conjunction with a public or quasi-public use, and shall be subject to first securing a Use Permit therefor. Day Care Centers located in the

- “R-4” and “R-5” Zoning Districts shall be permitted subject to first securing a Use Permit therefor.
- (2) Day Care Centers located in non-residential zoning districts which are operated in conjunction with adjoining businesses and which are mainly used by the employees of such businesses shall be considered accessory uses and shall be permitted.
 - (3) Day Care Centers located in non-residential zoning districts which are not operated in conjunction with businesses and which are not mainly used by such businesses shall be permitted subject to first securing a Use Permit therefor.
- c. Family Day Care Home. A home which regularly provides care, protection, and supervision of 12 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are absent. Family Day Care Homes may either be located in a detached single family residence or in a multi-family unit. Family Day Care Homes shall include the following defined terms:
- (1) “Small Family Day Care Home” means a home which provides family day care for 6 or fewer children, including children under the age of 10 years who reside at the home. The use of a residence as a small family day care home shall be considered a residential use of property for the purposes of this ordinance and shall be permitted in any Zoning District.
 - (2) “Large Family Day Care Home: means a home which provides family day care for 7 to 12 children, inclusive, including children under the age of 10 years who reside at the home. Large Family Day Care Homes shall be permitted in any Zoning District provided that the use complies with all of the following conditions:
 - a. The facility is the principal residence of the provider and the use is clearly incidental and secondary to the use of the property for residential purposes.
 - b. No structural changes are proposed which will alter the character of the single family or multi-family residence.
 - c. Provisions have been made to provide, as a minimum, one off-street parking space per employee of driving age not living in the home. For such purpose the residential driveway is acceptable if the parking space usage will not interfere with any required child vehicular passenger boarding or disembarkation area designed to prevent vehicles from backing into adjacent major arterial or collector streets. The residential driveway may be used as such boarding/disembarkation area.
 - d. Residences located adjacent to major arterial or collector streets shall be provided with a vehicular child passenger boarding/disembarkation area designed to prevent vehicles from backing into the major arterial or collector streets. The residential driveway may be used as such boarding/disembarkation area.
 - e. The facility provider shall comply with all applicable regulations of the Fire Department regarding health and safety requirements.
 - f. The facility provider shall have been issued a large family day care home license from the State of California, Department of Social Services. Proof of the issuance of such license shall be submitted to the Planning Division within 90 days of approval of the facility provider’s application for certification of compliance by the Planning Division with the requirements of this Section 2.21.1.c.2. If the license is revoked for any reason, the facility provider shall immediately notify the Planning Division. Such revocation shall be grounds for decertification of compliance herewith.

- g. The facility shall be operated in a manner which will not adversely affect adjoining residences and not be detrimental to the health, safety, and welfare of the neighborhood.

SAN FRANCISCO, CAL., PLANNING CODE § 314.4(A)(1)

The Department or the Commission shall impose conditions on the approval of building or site permit applications for office or hotel development projects covered by this Section in order to mitigate the impact on the availability of child-care facilities which will be caused by the employees attracted to the proposed development project. The conditions shall require that the sponsor construct or provide a child-care facility on or near the site of the development project, either singly or in conjunction with the sponsors of other office or hotel development projects, or arrange with a nonprofit organization to provide a child-care facility at a location within the City, or pay an in-lieu fee to the City Controller which shall thereafter be used exclusively to foster the expansion of and ease access to child-care facilities affordable to households of low or moderate income.

APPENDIX B: SELECTED GENERAL PLANS

This appendix provides a few examples of general plans that address child care in some form. Each example below addresses child care differently and therefore this appendix should be useful to advocates working with all types of general plans.

ALAMEDA COUNTY, EAST COUNTY AREA PLAN

Introduction

The East County Area Plan (part of the Alameda County General Plan) has a child care section in the Public Services and Facilities Element. Like other plans, the section is divided into goals, policies, and implementing programs. In particular, the plan addresses, among others, the low supply of child care, the lack of training of child care providers, and the effects of new developments on the child care supply.

Public Services and Facilities Element

Below are excerpts of the East County Area Plan, Public Services and Facilities Element:

Child Care

Goal: To encourage the provision of accessible, well designed and affordable child care services.

Policies

Policy 217: The County shall support the inclusion of child care centers in major residential and commercial developments and near transit, community centers, and schools.

Policy 218: The County shall work with the Economic Development Advisory Board and local resource and referral agencies to promote training for child care providers and employer use of child care benefit and information programs.

Policy 219: The County shall encourage major employers to contribute towards child care facilities and/or programs to help attract and maintain a productive work force.

Policy 220: The County shall consider the effects of major development projects on the supply of child care through the environmental review process, and shall require mitigation if a significant impact is identified. Mitigation may take the form of providing on-site or off-site facilities; in lieu fees to provide facilities and/or supplement child care provider training, salaries, or

information and referral services; or other measures to address supply, affordability or quality of child care.

Policy 221: The County shall support state and federal legislation to promote affordable, safe and high quality child care, and shall advocate for state subsidies to assist children with special needs.

Implementation Programs

Program 82: The County shall amend the Zoning Ordinance to include guidelines for child care centers to ensure compatibility with surrounding neighborhoods.

Program 83: The County shall inform employers of child care assistance programs (e.g., dependent care reimbursement, on-site facilities, and referral programs) for employees.

CITY OF CHULA VISTA GENERAL PLAN

Introduction

The city of Chula Vista General Plan contains an extremely thorough Child Care Element. It has an extensive background section that discusses the existing conditions of child care. In addition, it addresses specific issues that many general plans often omit such as (1) difficulties that parents with special needs children have in finding appropriate child care, (2) problems of transportation, and (3) streamlining the permit process.

CHAPTER 5A CHILD CARE ELEMENT

CONTENTS

Section

- 1.0 INTRODUCTION
 - 1.1 Overview
 - 1.2 Background
- 2.0 EXISTING CONDITIONS
 - 2.1 Needs Analysis
 - 2.2 Funding Methods
 - 2.3 Family Assistance Programs
 - 2.4 Current Zoning and Locational Criteria
- 3.0 ISSUES
- 4.0 GOAL, OBJECTIVES & POLICIES
 - 4.1 Quantity and Location of Child Care Facilities
 - 4.2 Affordability of Child Care Services
 - 4.3 Maintaining High Quality and Safe Child Care Services
- 5.0 REFERENCES

1.0 INTRODUCTION

The Child Care Element of the Chula Vista General Plan describes the nature and extent of the existing and proposed child care system in the City, and identifies trends, issues and public policies relating to the City Council's goal that a balanced child care delivery system be developed for the City. The long-term goal of the Child Care Element is to make high quality child care services

available, affordable and accessible to those persons who either live or work in the City and who desire or need such services. In pursuit of this goal, the City of Chula Vista supports the principle of parental choice for child care and the need for a variety of options available in the community, and further encourages the participation of parents, providers, public officials, and employers in the decision-making process relating to the provision of child care facilities.

1.1 Overview

The provision of child care remains a significant social issue as evidenced by parents, employers, and public officials alike attempting to grapple with the problems facing families today. Today's families are increasingly two wage earner households, or in many cases households headed by single individuals, women primarily. The increasing number of children whose parents both are in the work force have created a greater demand for public policies and a multitude of services that make it possible for parents to earn a living and raise a family.

The City of Chula Vista recognizes that children represent the future. Studies have definitively shown that children enrolled in quality child care and youth programs at an early age are more apt to be well-adjusted and perform better in school. The City also recognizes that the existing child care services and facilities are not adequate to meet today's demand, and that this demand is increasing. To ignore this fact jeopardizes the long-term quality of the City's social, physical and economic well-being. Compounding the problem are the increasing limitations on financial resources for services. The public sector is allocating less money to address the growing service needs, and the non-profit sector is unable to fill the gap created by the loss of public funds. It is not possible for any one city, county, or organization to address these challenges. It will require the collective effort of parents, schools, business and community leaders, and the local, state, and federal governments to address the increasing child care needs. Moreover, only through cooperative and coordinated efforts can these actions succeed.

It is, therefore, the purpose of this Child Care Element to provide comprehensive policy direction for the provision of adequate child care facilities necessary to serve the existing and future developed areas in the City in a coordinated and cost-effective manner.

The City of Chula Vista believes it can best accomplish this goal through the adoption of policies that promote the City's role as an educator, employer, and facilitator, to act as a catalyst towards attaining the goal of readily accessible, and affordable, good quality child care that is available to those persons who either work or live in the City of Chula Vista and who are in need. There is also a great need to increase the public awareness of the acute shortage of child care and the consequences of such shortages. In addition, the City can address child care needs by using its land use and regulatory authority to encourage the provision of a variety of child care services in a variety of areas where compatible with adjacent land uses.

Although child care is not a state-mandated element of the General Plan, the City has included this policy document to address the growing need for child care facilities. The City Council, through the work of the Child Care Commission, and the Chula Vista 2000 Child Care Task Force before that, recognized that child care is an important city-wide service and an integral part of the city fabric. As growth continues and more families, children and employers move to Chula Vista the availability of adequate, affordable good quality child care becomes a greater city-wide concern. It is clear that child care is as important to growth and prosperity as other essential services like police, fire, sanitation, water and schools, and is a cost-effective method for reducing some social problems that often affect communities lacking adequate, good quality child care. The planning for and implementation of child care throughout the city should be recognized as providing an essential community service and should be considered in all related decisions.

1.2 Background

In July 1990, the Chula Vista City Council created the Chula Vista Child Care Commission and later directed the Commission to pursue the preparation of an Element to the General Plan. As a result, the Commission has endorsed this document, a statement of policies to be implemented throughout the City.

Enormous changes to the family structure and the economy are causing changes to the relationship between the family and society as a whole. Three factors signal the growth in demand for child care facilities in the area: (1) an increase in the population of children under the age of fourteen; (2) an increase in the number of working mothers and; (3) changes in the composition of families, including an increase in the number of single, working parents and dual income families. As a result, larger numbers of workers must make arrangements for the care and supervision of more children during work hours.

In a large majority of homes both parents work and the number of single parent households have doubled in the last decade. The number of children in Chula Vista under 14 years of age has been increasing at a dramatic pace as well. A survey conducted in 1989 by the National League of Cities showed that child care was the most pressing concern of families and 91% of cities responding placed child care as the top need for children of all ages. Local data, depicted on Table 5A-2, shows that Chula Vista currently has a substantial shortage of available child care spaces and that this shortage, approximately 60% of needed spaces, will most likely become more acute in the near future.

The Child Care Commission has determined that the child care supply has been limited by a combination of different factors. Some of the factors which have been discussed by the Commission include complicated and restrictive zoning regulations, relatively high permit and application costs, obtaining financing, high start-up costs, affordable sites, inadequate labor pool, high child care insurance costs, and a need for application materials, information and processing assistance to be available in languages other than English, especially Spanish. The Commission has

found that all of these factors singly or as a whole have definite impacts on the availability, accessibility, affordability and quality of child care in the City.

As an example, regulations relating to child care permitting should be easy to understand for all citizens wishing to operate a child care facility such as a Day Care Home or Child Care Center. Regulations that allow child care facilities of a variety of sizes to locate in a variety of zoning districts, at the same time safeguarding child and neighborhood concerns, are necessary if adequate, safe and affordable child care facilities are to be developed throughout the City.

It is the policy of the City of Chula Vista to encourage, assist and support the provision of good quality, affordable, available and accessible child care in the Chula Vista Community. There is no question that providing good quality child care is a cost-effective investment that can minimize long-range social problems in the community that will be far more costly to repair later. Zoning regulations should be uncomplicated, straightforward, and relatively unrestricted in order to encourage and guide the development of child care adequate to meet the needs of the community in the present and the future.

2.0 EXISTING CONDITIONS

In order to address the existing need for child care facilities and services, as well as those which will arise in the future, it is necessary to quantify the existing child care facilities and implementation programs. The following analysis of these resources includes an identification of constraints relative to the City's ability to meet the identified need. The following discussion examines the local supply and increasing demands for child care in the City.

2.1 Needs Analysis¹

Child care is presently provided in Chula Vista by non-profit and for-profit providers. The two principal types of facilities are Family Day Care Homes and Child Care Centers. Licensing for both is under State regulation and administered by the California Department of Social Services, Community Care Licensing Division. Family day care homes are licensed to care for a maximum of either six or twelve children, and provide this care in the child care provider's own home. Although these facilities can serve any age child, they most frequently serve children between the ages of birth and five years old. Child care centers, however, are larger facilities that are licensed to care for between 13 and 250 children, and are required to meet a host of State minimum health and safety standards, such as certain indoor and outdoor square footage requirements, teacher-to-student ratios, educational training, etc. set by the State. Child care centers exist in both residential and non-

¹ Reference Chula Vista Demographics & Child Care Needs Analysis (City of Chula Vista Planning Department, 1994). This report provides comprehensive analysis documentation of the demographic, social, and public sector trends and implications summarized in this chapter.

residential areas, and typically serve children between the ages of two and twelve. However, they are not limited to this age group.

In 1993 there were an estimated 13,762 children in need of child care in Chula Vista.² Included are children needing before and after school care. These numbers, however, do not account for children being served by unlicensed facilities. As of March 1994 there were 315 licensed child care facilities of all types with space for approximately 5,360 children. Based on estimated needs this leaves a shortage of approximately 8,402 spaces. The shortage in school age availability is most acute, with 6,898 occurring at that age group. Table 6-1 documents the availability of child care in Chula Vista and Table 6-2 shows the estimated need and the current number of child care spaces available as of March 1994. Interestingly, most child care facilities in the City are found in areas west of the Interstate 805 freeway. The generally older housing characteristic of the Montgomery and Central Chula Vista Planning Areas is often less costly, and the generally larger average lot sizes can more readily accommodate state mandated space requirements for child care facility operation. The provision of child care in a family home setting is most frequently the source of a second or supplemental income to the provider family rather than a primary one. Persons that provide child care are often mothers who are supervising their own children and take in other children to help generate a small amount of income to offset income lost by not being in the away-from-home work force. Family Day Care is seldom profitable and sustaining as a "business

² State of California, Department of Social Services, Community Care Licensing, Management Information Request Listing, March 9, 1994; and California Department of Finance, Demographic Research Unit, San Diego County Population and Housing Estimates January 1, 1994.

TABLE 5A-1

**LICENSED CHILD CARE IN CHULA VISTA
CHILD CARE CENTERS AND FAMILY DAY CARE HOMES BY ZIP CODE**

ZIP CODE	91902	91910	91911	91913	TOTAL
TOTAL NUMBER OF FACILITIES					
SMALL FAMILY DAY CARE HOME (SFDCH)	17	61	107	15	200
LARGE FAMILY DAY CARE HOME (LFDCH)	5	15	24	11	55
CHILD CARE CENTER (CCC)	9	36	13	2	60
DAY CARE CENTERS (12+ CHILDREN)					
# OF FRANCHISE/FOR-PROFIT	6	12	2	0	20
# OF EMPLOYER PROVIDED	0	0	0	0	0
# OF NON-PROFIT	3	24	11	2	40
CURRENT NUMBER OF LICENSED SPACES (SFDC & LFDC)					
SMALL FAMILY DAY CARE HOME (SFDCH)*	51-102	183-364	321-624	45-90	600-1,180
LARGE FAMILY DAY CARE HOME (LFDCH)	60	180	288	132	660
CURRENT AVAILABLE NUMBER OF LICENSED SPACES (CENTERS)					
INFANT** (0-2 YEARS)	48	86	12	N/A	146
PRESCHOOL (2-5 YEARS)	362	1,379	553	N/A	2,294

SCHOOL AGE (5-12 YEARS)	288	902	230	N/A	1,420
----------------------------	-----	-----	-----	-----	-------

SOURCE: State of California, Department of Social Services, Community Care Licensing Division, March 9, 1994

* - *Licensed space capacities are given as a range in the SFDCH since State licensing criteria includes licensee's children under 10 years of age that are residing in the home. Infant care decreases the number of children that can be cared for in the home even though the license may be for a specific number of children.*

** - *Includes children in licensed toddler programs.*

TABLE 5A-2

CURRENT SUPPLY AND DEMAND FOR LICENSED CHILD CARE IN CHULA VISTA

AGE CATEGORY	TOTAL # OF CHILDREN*	CHILDREN NEEDING CARE**	TOTAL # OF SPACES AVAILABLE	SHORTFALL AND PERCENTAGE OF CHILDREN FOR WHICH LICENSED CHILD CARE IS NOT AVAILABLE
INFANT*** (0-2)	5,853	2,354	646	1,708 / 73%
PRESCHOOL (2-5)	7,085	2,590	2,794	+204/ 7%
SCHOOL-AGE (5-12)	17,865	8,818	1,920	6,898 / 78%
TOTAL	30,803	13,762	5,360	8,046 / 61 %

*Based on 1990 Census of Population and Housing (Rpt. STF1A), and adjusted 9.04% to reflect SANDAG population estimate of 1/1/94.

**Calculations computed using method outlined in, Child Care and Development in San Diego County by San Diego County Commission on Children and Youth, February 1994.

The methodology employed is number of children from census, multiplied by the number of children with working parents (given as 85%), less number of children that are not using licensed or licensed exempt child care for any number of reasons. Reasons for not using 'formal' child care include; parents' choice not to use child care, employing 'nannies' (live-in or visiting); using informal child care such as relatives, friends and neighbors; lack of funds or; parents give up looking for space or facility after not being able to find a convenient facility or time arrangement to suit their work schedule.

***Includes children in licensed toddler programs.

2.2 Funding Methods

Many child care facilities are funded through the use of private capital (loans, franchises, partnerships, etc.). There are, however, alternative funding options for some child care providers. Federal and state grants, foundation grants, public-private partnerships and special assessment districts are other tools that are available.

GRANTS

Federal and State grant programs are available to non-profit child care providers (family day care homes are viewed as for-profit). Federal grants can be used for both start-up costs for future new facilities and for the renovation of existing structures. Currently, Federal and State grants are primarily used for subsidizing the cost of child care for parents and to fund maintenance and operation costs, rather than the establishment of child care facilities. Existing grants include Community Development Block Grants (CDBG), federal, as well as state grants for special populations and facility expansion. State grants are not available for start-up, for maintenance or for operation costs, as are some federal grants, but primarily for subsidizing the cost of child care. States must spend 75% of their federal CDBG allocation to subsidize low-income families through certificate (voucher) programs. The remaining 25% is available for contracts to provide early childhood education, school-age child care programs, and quality improvement projects.

FOUNDATIONS

Private foundations provide various grants for the funding of child care programs and facilities. Each grant specifies the uses for which the grant may be used. Some of the grants may be used for the payment of tuition/fees only, while others can be used for transportation costs, extended child care hours or other purposes. Grantor can specify specific requirements to be met for each grant.

PRIVATE SECTOR

Many private sector employers enter into partnerships with child care providers to establish child care facilities for their employees. Employers can finance construction, make available space for the operation of a child care facility or can subsidize the child care facility in other ways.

MELLO-ROOS COMMUNITY FACILITY DISTRICT

The Mello Roos Community Facilities District Act permits the formation of special assessment districts to fund the purchase, construction, expansion, improvement or rehabilitation of child care facilities with the vote of two-thirds of the district's property owners.

2.3 Family Assistance Programs

Many assistance programs are available for financing of child care for families in need. Below is a listing of just a few of these types of programs. State child care and developmental programs are the main source of subsidized care in the State. These programs are designed to assist in the growth and development of children while at the same time helping parents achieve financial stability through employment or education. For most program types, family eligibility is based on income and need. Income must be at or below 84% of the state (California) median income (\$2,246 per month for a family of 3 in 1992-3). The family however remains eligible until it reaches 100% of median income (\$2,674). The need for child care may be based on parental employment, enrollment in school or a job training program, or incapacity. Children who need protective services are eligible regardless of family income or parental status and receive first priority for available spaces. All families contribute to the cost of child care on a sliding scale, unless their income falls below 50% of the state median income. A few program types do not charge fees.

2.3.1 Types of Programs

General Child Care and Development

General Child Care and Development Programs primarily serve low income families, most of which are headed by single, working parents. There are three types of general child care and development programs:

Public School Programs - located on public school sites and are operated by school districts or non-profit agencies.

Community Programs - provide same services as public school programs but are contracted other public or private agencies, such as cities, universities and local community agencies.

Family Child Care Systems - networks of family child care homes operating under an agency that provides training, consultation, resource materials to providers and enrolled families.

Campus Child Care

Primarily for the children of students attending classes on the campus. Some of these centers operate as lab-schools for the training of students currently enrolled in child development classes. These are funded by a combination of state funds, student body fees, and parent fees.

School-Age Parenting and Infant Development (SAPID)

SAPID provides services to infants and toddlers of teenage parents who are continuing to work towards high-school graduation.

Severely Handicapped Programs

Provide supervision, care, therapy, youth guidance, and parental counseling to families who have children with severe disabilities, until the child reaches the age of 21.

Children with Exceptional Needs

Exceptional children are "mainstreamed" where they are provided integrated services with both handicapped and non-handicapped children.

Protective Services

Short-term child care services for families in crisis. Children must be identified as being neglected, abused, exploited, homeless or at risk thereof.

School-Age Community Child Care ("Latchkey") Programs

Provide care before and after school and during vacations to children in kindergarten through grade 9. Priority is given to younger children, in grades K-3. Equal numbers of subsidized and non-subsidized (fee paying) children must be served. The sites are usually near or on school sites. Most programs are operated by non-profit agencies.

2.3.2 Public Pre-schools

HEAD START - Federal program for low-income families with children ages 3 and 4 available to very low income working, unemployed and parents job-searching, training or attending school. Parental participation is required and funding is directly by the federal government to the schools and non-profit agencies that provide the service.

STATE PRESCHOOL - Part day programs for low-income with children ages 3-4 available to working, unemployed and parents job-searching, training or attending school. These programs are modeled after Head Start but are funded by the state rather than the federal government.

STATE SUBSIDIZED PROGRAM - Child care provided to families based on qualifying income and need for working, unemployed and parents job-searching, training or attending school.

EVEN START - Federal literacy program for children and their parents. Designed to break the cycle

of illiteracy in families, it integrates adult basic education and early childhood programs. Services are operated by schools and community based organizations.

GAIN - (Greater Avenue for Independence) Child care assistance to families who receive Aid for Families with Dependent Children (AFDC) and participate in education and job-training and those that completed the program and are now working.

NET - Child care assistance to families who receive AFDC and participate in education and job-training who are not in GAIN.

Title IV-A - Child care assistance to working families at risk of becoming eligible for AFDC. Under Title IV-A, the federal government will match state costs for AFDC-linked child care services, dollar for dollar. However, no federal money is provided for child care costs that are above 75% of the regional market rate.

2.4 Current Zoning Regulations and Locational Criteria

The City of Chula Vista currently requires permits for many Large and Small Family Day Care Homes, however, a distinction is made regarding particular zones and structure types in the regulating process. The Child Care Commission forwarded recommendations to the City's Conditional Use Permit (CUP) Advisory Committee for proposed modifications of the current zoning regulations. The CUP Advisory Committee will be, in turn, forwarding recommendations to the City Council which may result in modifications to the current zoning requirements.

Large planned residential communities (over 50 contiguous acres in size) are required to reserve acreage and/or facilities for the provision of Community Purpose Facilities. These facilities consist of non-profit secular and non-secular land uses which provide social needs to the community (e.g., YMCA, Boys and Girls Clubs, religious institutions, etc.). Child Care is considered an accessory land use to Community Purpose Facilities, and therefore permitted in conjunction with each.

Within the Eastern Territories of Chula Vista is a portion of the 23,000-acre Otay Ranch. One of the requirements of the Otay Ranch development will be a Child Care Master Plan. This master plan will provide an action plan for the provision of Child Care within the project which currently does not exist in any other project or area of the City.

3.0 ISSUES

As stated previously herein, the purpose of the Child Care Element is to provide the overall direction for the provision of adequate child care facilities necessary to serve existing and future developed areas of the city in a coordinated and cost effective manner. This will be accomplished by identifying the key issues that should be addressed in the Element, and establishing goals, objectives, policies and implementation measures in response to each issue. The issue statements may be either opportunities or problems that the city will encounter in providing adequate child care facilities.

1. The San Diego County region needs a proactive child care policy and more collaboration among various councils, committees, agencies, and individuals.

Discussion: There is a need to educate the community-at-large to the fact that quality child care is critical to children's health and well-being. Research clearly shows that children who participate in quality child care and early childhood education programs have higher achievement scores, reduced need for special education classes, reduced high school drop out rates, and higher rates of employment compared to children with similar socioeconomic backgrounds.

2. There are insufficient facilities available for infant and schoolage care.

Discussion: In Chula Vista the highest priority child care needs, by age of child, are for infants (birth through one year of age) and school age children (ages 5 through 14). Most providers prefer to offer preschool care for children between the ages of 3 and 5 because the hours are more regular for this group and the equipment and staffing are not as costly as for infant care. Affordable, subsidized spaces for child care are the highest priority for all age children, including preschoolers (ages two through four). Specific problems within each age group are noted below:

Infant Care - High quality infant care costs more. Decreased child/adult ratios (less children per adult) translates to higher costs. These costs can not always be covered by the tuition fees paid by parents alone. Employer parental leave policies usually only allow for short leaves often causing parents to return to work soon after birthing. Since so many parents are returning to the workplace so soon a great demand is created for a service that is in very limited supply.

Infants are especially vulnerable to poor quality programs which typically focus on physical tasks, ignoring the social and emotional development of the child at a time when this attention is most necessary. Many care-givers, especially in the family day care setting are untrained and often do not have access to current information relating to infant development and group care.

High employee turnover rates due to low wages, stress and lack of benefits like health care also make a consistent program and relationship difficult to provide.

School Age Care - Funding, staffing and facilities are all areas of major concerns in all child care, but is especially acute in the school age care segment. Sufficient funding is not available to subsidize care for low income families. When families are forced to make decisions based on finances many are left unattended and "latch-key" children are the result. Staffing at school age

programs is problematic because services are required only before and after school and have to be adjusted for various schedules making it difficult to recruit and maintain staff to work these irregular hours. Additionally facilities located close to schools are in short supply for child care use.

3. The high costs of establishing and maintaining child care centers are a major factor inhibiting the provision of sufficient child care.

Discussion: The obstacles that providers encounter in establishing child care centers are: obtaining financing, high start-up costs, locating affordable spaces to lease or buy, ongoing maintenance and operation, inadequate labor pool, and high child care insurance costs. Due to these limitations, many facilities are never opened, are not situated in the most optimal location, or do not have economical rates. Government funding to help finance or renovate non-profit child care centers has substantially decreased in recent years, further inhibiting the establishment of affordable child care facilities.

4. There is a significant lack of child care spaces available in child care settings for children with special needs and/or exceptional needs.

Discussion: Using various sources of local data, including 1990 Census data it is estimated that approximately 25,000 children in San Diego County would qualify as having special needs³. While local statistics on the number of special needs children cared for in family day care homes and centers are generally unavailable, inquiries with some child care operators suggest that children of special needs are severely under-provided for in child care settings throughout the County. San Diego County reports 13% of all live births have special needs or are at risk of developmental delay. There is only one working model in the County (Special Care Center) providing care and education for the most medically fragile children. Locally, there will continue to be increases in the number of medically fragile children. There will be a near constant 10-12% of all children in the County who will qualify as having special needs. There needs to be a growing awareness of, and subsequent compliance with, the Americans with Disabilities Act, resulting in increased early integration, and in some cases, full inclusion for children with special needs in child care settings.

5. Currently there are no universally accepted criteria that define quality child care programs.

Discussion: Locating good quality child care can be a formidable task for parents, even with the assistance of a resource and referral agency. When good quality care is found, it often has a lengthy waiting list, or is not conveniently located or affordable. The fact that there is no national child care policy in effect, affording all children and their families high quality, affordable, convenient child care, has resulted in such a patchwork child care system that, more often than not, misses the mark. California regulations, which are based largely on meeting the minimum Health and Safety Code

³ The California Department of Education defines children with special needs as limited English proficient children, children with exceptional needs, and children that are severely handicapped or at risk of neglect, abuse or exploitation. Exceptional needs children have been determined to be eligible for special education and related services by an individual education program team as per special educational requirements. Source: Child Care and Development in San Diego County, February 1994.

standards, do not address issues relating to excellence and quality in child care programs. The lack of cohesive child care policies has not only led to fragmentation of services, but to the lack of consistent application of standards regarding quality, health and safety; a lack of subsidized child care and a shortage of quality child care.

6. With the changing work force and shift in demographics, transportation and child care can have a significant impact on commute patterns.

Discussion: Today, major transit organizations are considering child care as a key link in plans to relieve congestion, gridlock, air pollution and to promote ride-sharing and transit use. It is now recognized that wise planning considers the transportation needs of transit-dependent parents, by locating child care near transit centers. Employers, who support child care options at the work place, realize satisfactory child care, reduce absenteeism and tardiness, and increase recruitment and longevity of employment. The City of Chula Vista has provided two telecenter locations (centrally-located work stations, in-lieu of long-range job commuting), and contacts have been made with area child care providers, making child care spaces available for telecenter users if needed.

7. The lack of uniformity in the zoning, planning, and inspection processes within the region, in relation to proposed child care facilities, can pose significant difficulties for child care providers and development teams that deal with the approval process, permits, reviews, and final inspections.

Discussion: In order to establish a child care facility, would-be providers must wind their way through state licensing requirements for providers, design and safety standards for buildings, fire regulations, and special staffing and curriculum requirements. On the local level, zoning and special permit policies must be achieved for parking, lot coverage, fire safety, etc. Regulations may easily be listed in as many as eight different state and local codes and ordinances. When development teams, for child care centers, are faced with different zoning and planning policies for each city in the region and the County, ambiguity is created as to specific criteria that must be met to establish a child care facility. This ambiguity, coupled with the complexity of the regulations, the cost of meeting all of the requirements, present formidable obstacles to expanding a community's supply of child care. Furthermore, because of variation in code interpretation by state, fire and city personnel, as well as the timing of approvals and final inspections, some codes, regulations, and inspection processes can negatively impact design quality and facility costs.

8. Increasing child care needs are created by demographic changes and by new development.

Discussion: Demographic changes such as the increase in working mothers and the changing composition of families are the main factors contributing to the increased need for child care facilities. Population and job opportunities created from new residential and commercial development add to the number of children in need of child care facilities. Demand is increasing faster than supply.

4.0 GOAL, OBJECTIVES & POLICIES

The goal and objectives of the Chula Vista Child Care Element reflect the City's desire to achieve quality child care services for those persons in need residing or working in the City. The Element's comprehensive needs analysis and identification of issues form the basis from which Chula Vista developed the goals, objectives, and action plans to address child care needs. Thus, the goals and objectives presented in this section detail specific statements of policy regarding what should or should not take place during the course of the City's development.

The policies and implementation measures in this section have been established to promote and guide the provision of Child Care facilities within the City of Chula Vista. It should be recognized that each of these policies and measures cannot be implemented immediately and that staff availability and funding considerations will be determining factors in their timely implementation. Because actual implementation will occur over time, individual projects may be analyzed on the basis of how closely they meet the intent of the Child Care Element.

GOAL: ENCOURAGE SAFE AND AFFORDABLE GOOD QUALITY CHILD CARE THAT IS AVAILABLE AND ACCESSIBLE TO ALL ECONOMIC SEGMENTS OF THE COMMUNITY

OBJECTIVE 1: ENCOURAGE THE PROVISION OF ADEQUATE CHILD CARE FACILITIES AND SERVICES TO MEET THE EXISTING AND FUTURE NEEDS OF THE COMMUNITY.

OBJECTIVE 2: LOCATE CHILD CARE FACILITIES NEAR HOMES, SCHOOLS, WORK PLACES, AND MAJOR TRANSIT FACILITIES AND ROUTES.

OBJECTIVE 3: ENCOURAGE THE PROVISION OF QUALITY CHILD CARE FOR ALL FAMILIES WHO NEED IT, REGARDLESS OF INCOME.

OBJECTIVE 4: PROMOTE THE SAFETY AND WELFARE OF CHILDREN IN ALL CHILD CARE FACILITIES.

POLICIES AND IMPLEMENTING ACTIONS:

4.1 QUANTITY AND LOCATION OF CHILD CARE FACILITIES

Objective 1: Encourage the provision of adequate child care facilities and services to meet the existing and future needs of the community.

Objective 2: Locate child care facilities near homes, schools, work places, and major transit facilities and routes.

4.1.1 Policies

1. The City shall support and assist efforts that ensure the availability of a variety of child care facilities and services in appropriate quantity at the time and place of need.

2. The City shall support and assist in efforts to define the role that new development plays in the demand for child care, and the role it should play in the supply of child care facilities.
3. The City shall encourage the development of child care space within residential and commercial development projects, including new construction and reuse, to meet the needs of residents and employees by adoption of employer/developer program incentives.
4. To effectively meet local demand, the City shall examine opportunities for amending its zoning ordinance to encourage the provision of child care in all areas of the City.
5. The City shall consider the location of child care facilities at employment centers and along transit routes to increase the accessibility of services to working parents and low income transit-dependent families.
6. The City shall work in partnership with the Chula Vista Elementary School District and other public and private school systems to evaluate opportunities for establishing child care facilities and programs on or near existing and planned schools.
7. The City shall strive to maintain its role as a model employer by aggressively and comprehensively exploring options available to meet the child care needs of its employees. The City should actively seek to demonstrate that employer-sponsored child care has a positive, beneficial and cost-effective influence on the work force.
8. The City shall work in partnership with non-profit organizations to encourage development of affordable child care facilities as well.

4.1.2 Implementing Actions

Ongoing Evaluation of Child Care Needs

While the Child Care Element provides an excellent foundation for understanding existing and future child care needs in the community, the City should establish an ongoing process for evaluating child care needs and ensuring that local child care programs and policies are geared toward meeting the real needs of the community. The following have been identified as possible components of such an evaluation process:

1. Evaluate community needs on an annual basis to gauge the amount and type of child care needed; and make recommendations through the Child Care Commission that are based upon City policy and the gaps between demand and supply.
2. Establish, as a target, the desirable number of available child care spaces, both public and private, that should be located in the City; and coordinate the evaluation of community needs on an annual basis with the Chula Vista Child Care Commission.

3. Advocate that a centralized regional data collection system be established to more accurately analyze the supply, demand and utilization of child care, and further determine specific needs.
4. Develop a formula for use in assessing the child care needs created by new development.
5. Consider the feasibility of requiring developers of major residential, commercial, and industrial projects to use the adopted formula to assess the impact of their projects on child care supply and demand in the community as part of the project environmental impact report.
6. Conduct commuter surveys to assess the proportion of workers with child transport responsibilities, and to better quantify the child care/transportation link.

Locating New Child Care Facilities

The City should evaluate various means by which it can ensure that child care facilities are allowed in locations which are convenient to residents and workers in Chula Vista. This evaluation should include further review of City zoning regulations which may unnecessarily restrict the location of child care facilities, as well as considering the use of schools, churches, public buildings, and other facilities which could be adapted to provide convenient child care locations. Specifically, the following options should be evaluated:

Land Use and Zoning Regulations

1. Consider a Municipal Code amendment which will give special consideration to child care facilities wishing to locate in existing, under-utilized school-district or municipal buildings, or proposing adaptive re-use of such facilities for child care programs.
2. Consider modifications to present Municipal Code standards that would permit child care centers in mixed use projects that include residential development.
3. Examine the existing spatial distribution of child care facilities located within the City, and respond, where necessary, with recommendations that ensure such facilities can be developed within different land uses.
4. Evaluate the potential for expanding the number of zoning districts to allow the siting of child care facilities in zones not currently allowed. Particular consideration should be given to opportunities that may exist in the Central Business (C-B) and Limited Industrial zones (I-L), as well as residential zones and areas designated for public and quasi-public land uses.
5. Review zoning requirements to ensure that child care is an acceptable land use along transportation routes, and at major employment and housing sites.

Schools

6. Explore the establishment of a joint powers agreement between the City and the Elementary School District to facilitate cooperative and coordinated actions geared towards providing on- or near-site child care.
7. Establish partnerships between public, private, private non-profit and parochial schools to offer a safe environment with age and developmentally appropriate activities using subsidized, licensed-exempt locations where possible.
8. Develop and utilize a facilities checklist to assure that future school buildings are designed to accommodate child care, whether in specifically dedicated or shared-use classrooms.

Other Public Facilities

9. Consider the inclusion of child care services in new and existing City buildings, such as community centers, if compatible with existing and planned programs.
10. Evaluate the potential for siting relocatable modular units designated for child care use in public parks. Special consideration should be given to before- and after-school programs in parks located near schools, particularly when the school has insufficient space to locate the structures.
11. Where feasible, make vacant or under-utilized City property available to child care providers; lease under-utilized City facilities to non-profit child care providers for a nominal charge.
12. Utilize a facilities checklist to assist in the design, construction and planning of capital improvement projects providing child care space, and in the retro-fitting of existing structures to accommodate shared-use classrooms.
13. Include child care facilities as an amenity to major transportation hubs and origin and destination points by siting facilities at multi-modal stations, park-and-ride lots, trolley stations and other locations accessible to public transportation.

Regulatory Reform and Permit Streamlining

In addition to reviewing policies and regulations dealing with the location of new child care facilities, the City should also continue to review and simplify its regulations and procedures for permitting of child care facilities. The Child Care Commission has already completed a preliminary review of City permitting regulations, and has recommended changes that would simplify the process for many types of child care facilities. These recommendations should be implemented as soon as possible. In addition, the City should evaluate the following additional measures which could further simplify the permitting process:

1. Conduct studies to simplify and streamline the development review and approval processes for large family day care home permits by standardizing the siting criteria in certain zoning districts to allow the processing of non-discretionary permits.

2. Consider the designation of an existing staff member in the Planning Department or other development service department as a City "child care specialist" to conduct early review of plans for child care centers.
3. Develop guidelines and a procedural handbook that outlines the criteria to be used by both staff and the applicant in streamlining the permit and development review process.
4. Consider staff participation on the San Diego County child care advisory commissions to assist in establishing acceptable development standards and to identify sources of money for child care.
5. Consider the feasibility of waiving fees for small family day care providers that wish to expand from six to twelve children.
6. Coordinate with state regulatory agencies to review and revise state licensing and local requirements to allow for more flexibility on a case-by-case basis.

Incentives for New Development to Provide Locations for Child Care Facilities

The review of policies and regulations addressing the location of child care facilities, and permit streamlining measures, as described above, should provide greater flexibility in the siting of new child care facilities, both in developed communities and in new planned communities in Chula Vista. In addition, the City's Community Purpose Facility Ordinance requires developers of new planned communities to designate a certain amount of land to be utilized only for community facilities such as churches, private schools, community centers, and the like; these sites could also accommodate child care facilities. However, the City should consider establishing a program which would provide other incentives for establishment of locations and/or facilities for not-for-profit child care in new development. In developing such a program, the following types of incentives and activities should be considered:

1. Develop a marketing / media campaign for residential, business and commercial and shopping center development to include child care facilities.
2. Grant priority processing for development projects that include an on-site child care facility.
3. Consider a program that evaluates an incentive program that offers a bonus in density or intensity of use for commercial, industrial, and residential projects that provide child care facilities.
4. Integrate child care needs with the local transportation planning process by coordinating efforts between land use and transportation planners.
5. Include the provision of child care facilities as a transportation control measure.

6. Consider information and referral assistance and/or subsidy vouchers to be used to reduce child care costs, and reconciliation of child care licensing requirements with City requirements and standards.

The City's Role as Employer in Providing Child Care Services

The City should consider the development of a child care program for its employees, which could include the following components:

1. Review and publicize City personnel policies and programs related to child care, such as maternity/paternity leave, job-sharing, and negotiated employee benefit plans that use pre-tax dollars for child care reimbursement, such as flexible spending accounts.
2. Offer child care referral services, lunch hour programs and other assistance to employees with child care needs.
3. Establish a task force to evaluate child care alternatives for City employees. This task force may coordinate with the City's Child Care Commission on appropriate issues when necessary.

4.2 AFFORDABILITY OF CHILD CARE SERVICES

Objective 3: Encourage the provision of quality child care that is available for all families who need it, regardless of income.

4.2.1 Policy

The City supports the concept of affordable child care and shall, as funding becomes available, direct child care assistance programs to those who have a demonstrated need and live and/or work in Chula Vista.

4.2.2 Implementing Actions

In addition to the programs described above that are intended to encourage new child care facilities in the City, there is also a need to pursue measures which would bring affordable child care to those who are in need of it. The City should evaluate the following possible actions:

1. Pursue grants at the federal, state and local government level to fund capital improvement projects and start-up and operational expenses for child care centers.
2. Advocate state and federal legislation that will support affordable child care.
3. Encourage employer contributions towards employee child care costs.