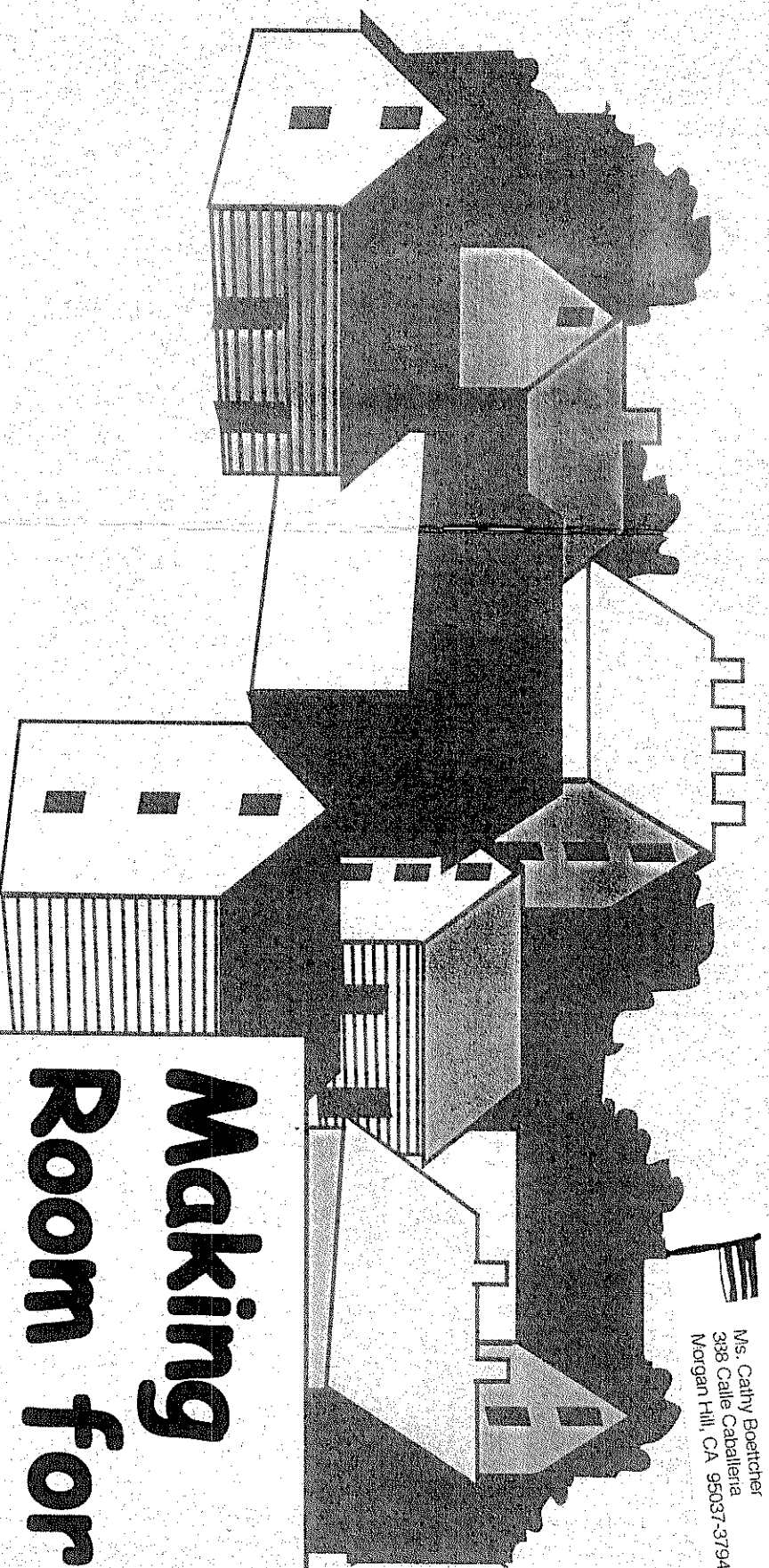


This publication was written by David Foster, Project Manager, Pajaro Valley Housing Corporation, as an activity of the Santa Cruz County Child Care Facilities Development Intermediary (DI). The DI is a collaborative effort of the Santa Cruz County Office of Education Child Development Resource Center, the Central Coast Small Business Development Center, El Pajaro Community Development Corporation, the Santa Cruz County Community Credit Union, Pajaro Valley Housing Corporation, and the County of Santa Cruz Human Resources Agency. The DI is supported by grants from the David and Lucile Packard Foundation and the Community Foundation of Santa Cruz County.

January 2001

Note: This pamphlet was developed as a guide to provide an overview of the basic issues involved in developing Family Child Care Homes within multi-family housing developments. The Santa Cruz County Office of Education and the Pajaro Valley Housing Corporation are not engaged in rendering legal, accounting, or professional services. It is recommended that legal or expert assistance be sought prior to planning to include Family Child Care units in a multi-family housing development.



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Making Room for Children

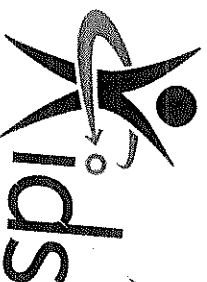
Incorporating Family
Child Care Homes into
Multi-Family Affordable
Housing Developments

— Questions & Answers

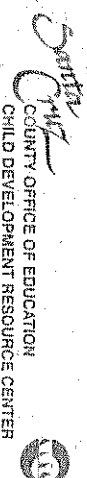


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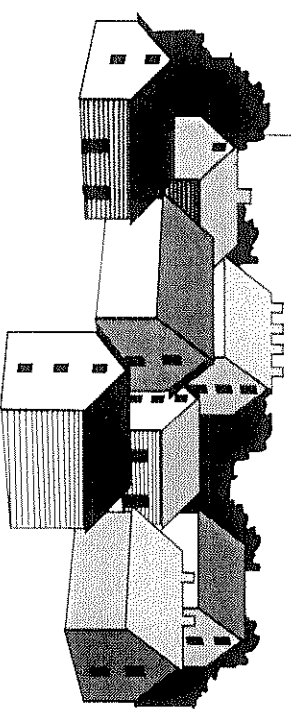
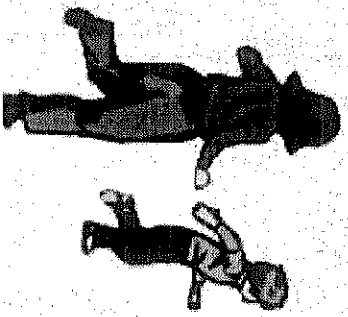


CHILD DEVELOPMENT RESOURCE CENTER

Incorporating Family Child Care Homes into Multi- Family Affordable Housing Developments

Increasingly, affordable housing developers are working to incorporate child care programs into their existing and new housing communities. The development of Child Care Centers within the housing site has been the most common method. However, the inclusion of Family Child Care Homes within the residential plan is an alternative that is also being utilized. A "Family Child Care Home" is a child care setting in which the state licenses a provider to care for up to 14 children in her or his own home. Family Child Care providers are regulated and must comply with health and safety standards. Parents often choose Family Child Care because of its home-like atmosphere, flexible hours, and proximity to their home or work. Currently, about one-third of the children cared for in licensed child care settings in California are in Family Child Care Homes, making Family Child Care a common and important source of licensed child care in the state. Family Child Care providers often contribute to building and neighborhood safety by their presence., an additional benefit of including such programs in multi-family affordable housing developments.

The following is a review of the basic questions and answers that are asked when considering the possibility of incorporating Family Child Care Homes into the design and operation of new affordable multi-family housing projects. This information has been gleaned from a variety of resources (listed on page 15). Although the idea of designing Family Child Care into new multi-family rental housing projects has been entertained by numerous groups in recent years, there are few operating examples in California. This outline is meant only to give brief, general answers to basic questions. Assistance from your project attorney, tax credit consultant, project lenders, the local Child Care Resource and Referral Agency, non-profit developers who have previously completed similar projects, and other specialists should be utilized to ensure that your particular proposal to include Family Child Care Homes in a project is workable.



Questions & Answers

What is the need for child care in the county?

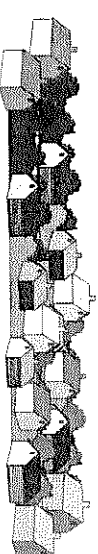
The Child Care Planning Councils in each California county have recently completed child care needs assessments. Their data can help you assess the need in your county. For example, about half of all families and children in Santa Cruz County need some form of child care. After housing, the cost of child care is often the second highest household budget expense. The U.S. Census estimates that there are 24,945 children aged 0-13 in Santa Cruz County that need child care, or about 60% of all children within that age group. However, according to a 1999 needs assessment conducted by the Santa Cruz County Child Care Planning Council, there are just 5,992 Full Time Equivalent licensed child care spaces in the county, enough to accommodate only 24% of all children needing care. The majority of the spaces, 3,475, are in Child Care Centers, and 2,517 spaces are in Family Child Care Homes. The incorporation of a Child Care Center or Family Child Care Homes into affordable multi-family housing developments is one way to help ensure that affordable child care will be available for the project's new residents. In Santa Cruz County, it is required that housing developers either provide child care facilities or deposit "mitigation" funds into a child care development loan fund that is then used to help finance child care facilities.

Are Family Child Care Homes licensed and legal?

Yes! In California, the Community Care Licensing Division of the State Department of Social Services oversees the licensing of both Child Care Centers and Family Child Care homes. In Santa Cruz and a few other counties, the county contracts with the state to conduct the licensing function. The State monitors health and safety requirements and checks to ensure that the provider and other adults in the household have a background free of criminal activity or child abuse. Family Child Care homes can be legally operated in residentially-zoned neighborhoods as long as the care is provided in the licensee's own home. In California, there are two FCC license categories.

How do Family Child Care homes operate and how are they funded?

Large Family Child Care Homes are licensed to provide care for up to 14 children, including children under 10 years of age who live in the home, if the provider is assisted by another adult. These homes must have a fire clearance.



Family Child Care homes are small independent businesses operated by sole proprietors or a small partnership. The child care business is funded through the tuition parents pay for their child care services. Typical tuition rates vary from provider to provider and are determined based on the age of the child, meals and other services provided, as well as the hours of service. Full, part-time, or a combination of care are all common with Family Child Care homes. Programs can offer infant and toddler care through after-school care for older children. In Santa Cruz County, average Family Child Care tuition rates for a full-time preschool child are currently about \$140 per week. Most Family Child Care providers see themselves as caregivers first and business people second. While many Family Child Care providers are very entrepreneurial, few have sophisticated administrative and financial systems. Some Family Child Care businesses are very profitable, but more typically net profits are small.

Low income parents, including those participating in Welfare to Work activities, can receive child care tuition assistance through alternative payment programs. This assistance sometimes includes a share of cost program (or co-payment) based on the family's ability to pay. Some Santa Cruz County Family Child Care providers may contract with Migrant Head Start or state migrant programs to receive funding to provide child care for children of agricultural workers.

Small Family Child Care Homes are licensed to provide care for up to eight children, including children under 10 years of

Are Family Child Care Homes legal in multi-family housing developments? Are they restricted by Section-8 or Tax Credit funding sources?

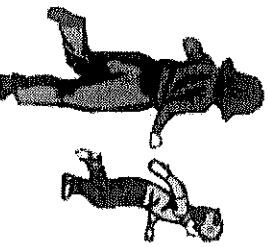
California Health and Safety Code Section 1597.4 provides that landlords cannot prohibit or restrict use or occupancy of rented premises for Family Child Care. Currently, neither the Section-8 program nor the Low Income Housing Tax Credit Program place any restrictions on the use of assisted rental units for Family Child Care. The development of Family Child Care units in HOME and CDBG funded developments is also permissible. Family Child Care Homes are considered a residential use rather than a commercial use and should therefore be permitted under Section 42 of the Internal Revenue Code which authorizes the low income housing tax credits. In fact, in California there is a state statute that specifically defines Family Child Care as residential use. All of this being said, there are limited examples of tax credit funded projects that have included Family Child Care Homes. While some tax credit investors may be hesitant about the idea, others may see the inclusion of Family Child Care units as an amenity to the project. Early communications with investors and with the project's tax credit consultant is advised.

What about fair housing restrictions on marketing the units to one group of qualified providers?

Under state and federal fair housing law, can we preferentially target a few units in a multi-family housing project for Family Child Care providers? Yes, you can set aside units for Family Child Care without violating fair housing law. Setting aside units for Family Child Care provision is not a violation because it doesn't discriminate against any protected class of possible renters. This means that you can have a separate application and waiting list specifically for those who intend to operate a Family Child Care business and maintain that list separately from the list for the other units. The Child Care Law Center believes that screening based on child care experience is also permissible. In spite of a general agreement that setting aside some units for Family Child Care providers is not a problem, it will be important to check with each funding source to be used on a project to assure appropriate marketing and recruitment of prospective tenants.

What about liability concerns for the property owner?

As a general rule, a Landlord owes the same duty of care to Tenant's guests, invitees, or clients of child care services on site, as is owed to the Tenant. As Landlord, you are liable for negligence or willful misconduct, NOT for the negligent or willful misconduct of a Tenant of your property. Therefore, rental to a Family Child Care provider by itself does not create Landlord liability or change your duty of care as a Landlord. As a Landlord you are also not responsible for the services provided by the child care provider in the operation of her/his own business – as long as you maintain a Tenant/Landlord relationship and are not involved in the day-to-day operations of the business. It is important to be clear that as the Landlord you are not controlling the day-to-day operations of the Family Child Care Home. Involving a local agency experienced in providing support to Family Child Care providers is one way to be comfortable with quality control issues without becoming directly involved in the program's oversight. If, as the housing developer, you are involved in supporting the business in some technical assistance or financial capacity, it is advised that you develop a written agreement with the Tenant that delineates your respective roles and clarifies that you as Landlord have no management control.



Under California law, Landlords cannot require Family Child Care Tenants to obtain liability insurance for the Family Child Care home. However, the Child Care Law Center highly recommends that Family Child Care providers obtain liability insurance. If your Family Child Care Tenant chooses to obtain liability insurance, the Tenant must add the Landlord as an additional, named insured on the policy if three conditions are met: 1) the Landlord requests in writing to be added to the policy; 2) the addition of the Landlord's name does not result in a cancellation or non-renewal of the policy; and, 3) the Landlord pays any additional premium. If the Tenant chooses not to get liability insurance, the parents of the children in care must sign an affidavit acknowledging the lack of insurance.

How would the resident/provider selection process work?

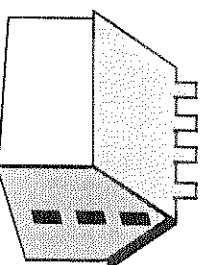
Marketing of the units would be focused on finding existing Family Child Care providers that are currently operating a program but who are in unstable rental situations or in units that are not adequate for the needs of the children. You may want to start with licensed providers with at least one year of experience, and work with new providers once your program is more established. Another suggestion would be to offer priority to providers who have completed Early Childhood Education courses. A local agency or training program, such as the local Resource and Referral Agency or a community college experienced in providing support to Family Child Care providers, may be able to assist in the interviews, home visits and selection process. The local agency may also be available to provide on-going support to the Family Child Care providers once they have moved into their new homes. Special application forms, interview questions and home visit forms will need to be developed.

Is there a demand for rental units specifically designed for use as Family Child Care homes?

Because of the desire to market the Family Child Care units to experienced providers, it makes sense to look closely at the existing providers in the county to determine if there is a need for specially designed rental units. For example, in Santa Cruz County, there are approximately 344 licensed Family Child Care Homes. In order to get more information about those homes, the Child Development Resource Center of the County Office of Education conducted a Family Child Care Economic Impact Report Questionnaire in September of 1999. They received a total of 327 responses. Of the survey participants 28% (91) were renters and 72% (251) owned their own homes. Monthly provider rents ranged from \$300 to a high of \$2,200, with an average rent (in September of 1999) of \$1,055. The housing patterns of Family Child Care providers may vary from one part of a county to another. For example, in the Watsonville area of Santa Cruz County there were 122 licensed Family Child Care providers—21% (26) renters. Monthly rents for Watsonville providers who rented ranged from \$380 to \$1,400, with an average of \$837.

In September 2000, the topic of Family Child Care homes in rental units was discussed at the regular meetings of the two Family Child Care provider associations in Santa Cruz County, the Family Child Care Association of Santa Cruz (with about 76 members) and the Asociación de Proveedores de Cuidado de Niños (with about 80 members). In both associations the majority of members are home owners. However members, noted significant problems in maintaining a business in a rental housing situation:

- Insecure tenure makes investment in the facility risky.
- Making alterations is problematic as they don't own the property.
- Security for a rehabilitation loan is lacking.
- There is no security against rent increases.
- Costs associated with having to move to a new rental situation are high and can involve the loss of client families.
- Low income providers may have no choice but to rent substandard housing units that may have environmental health risks, such as lead paint contamination, that are particularly dangerous for young children.



- In spite of state law protections, landlords are often unwilling to consider renting to a Family Child Care provider.
- Under state law Family Child Care providers may care for 8 children in a small Family Child Care program and 14 children in a large Family Child Care program. For renters, however, written permission must be received from their landlord to provide for more than 6 children in a small child care program or for more than 12 children in a large Family Child Care program.

The conclusion: It is extremely difficult to maintain a viable Family Child Care business if you do not first have the stability and flexibility that comes with home ownership. The provision of properly designed rental units that offer affordable rents and long term stability would address the problems confronting existing providers that are renters. In Santa Cruz County for example, with 91 renting providers county wide, there seems to be a sufficient pool of potential qualified applicants to make marketing of new rental units feasible.

What happens if the child care provider's income increases beyond the qualifying income for the project?

First of all, it is important to set up the Family Child Care units so that they can accept the highest income level allowed under your funding programs (80% of median if possible). This gives you the most flexibility for selecting good, experienced providers. As with all other tenants under tax credit programs, and under most other funding sources, once a Family Child Care provider is accepted within the income limits set by the funders and has moved into the home, it is okay if in the future they are able to earn above those income limits. However, when that household moves out, the new tenant must meet the income requirement set for that unit.

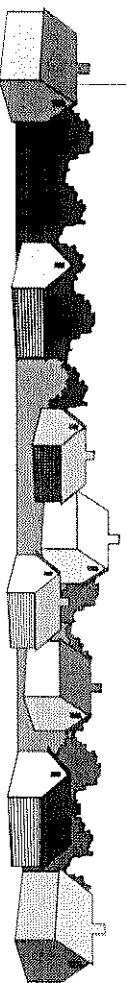
What if the tenant stops being a Family Child Care provider? Does that mean that they have to move out of the unit that's been designated for Family Child Care?

In the Occupancy Agreement it should be clear that the tenant agrees to provide licensed Family Child Care, at their expense, from the unit. The Agreement should also set a minimum number of children that the tenant agrees to care for. Please note, however, that it is not legal to require that the tenant give priority enrollment to children of parents who are residents of the housing project. You may want to add a clause that allows the tenant, with management's approval, to suspend Family Child Care services for a period of up to six months, for reasons mutually agreed upon. Failure to provide licensed Family Child Care services under the terms of the Agreement should constitute termination of the Agreement and a requirement that the Tenant vacate the unit. An alternative to eviction, of course, would be to consider transferring that household who would be otherwise eligible to the next available non-Family Child Care unit.

The marketing and selection process involved in finding a replacement provider once someone moves out will be just as time consuming as it was to find the first provider. Getting advance warning that a tenant may move out will help ease this problem. The Occupancy Agreement should require as much prior notice as possible.

What rent and security deposit should be charged?

The rent to be charged should be the same rent that will be charged for any other unit in the project that has the same number of bedrooms and the same income requirement. If the unit is set aside for a higher income (say 80% of median) then the rent would be adjusted accordingly. Another alternative would be to search out grant funds to help "buy down" the rent level so that lower than typical rents could be charged as an incentive to providers. There should not be a separate or increased rent related to the additional space being provided or related to the business being located on site. (A rent differential of that sort might cause the tax credit program to then characterize that space as being commercial rather than residential and thus not eligible for inclusion in basis.)



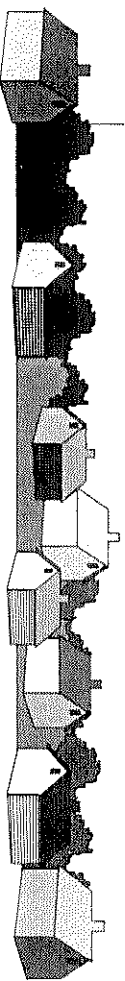
Landlords may charge Family Child Care provider tenants the maximum security deposit allowed under the law, even if a landlord does not charge other tenants the maximum amount. The maximum deposit amount permitted under California law is two months rent (in addition to the first month of rent).

How do you deal with the increased wear and tear on the unit?

For the Family Child Care units, it will be important to develop a very clear and detailed resident manual. The manual should clearly spell out what normal wear and tear is and what is abnormal. Give specific "child care type" examples of wear and tear that is acceptable and not acceptable (like juice spills vs. writing on the wall). The manual should also spell out the types of maintenance and repair work that will be provided and what will be expected of the tenant. Requiring routine interior painting by the tenant would be an example. Quarterly inspections could be required. Designing ahead for heavier than normal wear and tear can also take some of the worry out of long term maintenance issues. The inclusion of heavy duty flooring materials, fixtures and other equipment and hardware in the unit's design is advisable, if it can be fit within the project's budget.

How do you help your new Family Child Care provider with the costs of moving in and relocating their business?

Relocating a business can be very disruptive and in the case of Family Child Care Homes, it may mean the loss of some of their current clients. This is an added stress and financial burden beyond that encountered in the day-to-day operation of a small business. To assist with this transition, it is suggested that the Family Child Care provider be required to develop a transition plan that, among other things, identifies sources for any assistance that may be needed.



What design ideas should be incorporated into the home?

A Family Child Care unit should actually BE a home and FEEL like a home. We don't want to create a small "center." With this in mind, child care spaces are typically co-mingled within the living room, entry, dining room and kitchen of the unit. On the other hand, there are some very good examples of homes that have created child care spaces that are separate from the provider's family living space – a great benefit for all concerned if designed carefully. Family Child Care providers should be included early in the design development process. They will offer valuable insight into the day-to-day operations, storage needs and traffic patterns that should be included in the design. In general, licensing requirements for the home will be focused on health and safety issues, not on design and curriculum. The following list of suggestions is more of a wish list than requirements, but the long term viability of a Family Child Care Home is dependent upon a well-designed and adequate unit.

- To maximize program sustainability the units should be designed to accommodate a total of 14 children. Beginning providers are required to start out with only six children, but the ability to expand to the licensing limit should be in the long-range plan.
- There are no legal requirements that spell out the necessary usable space for Family Child Care. It is suggested, however, that indoor usable space for child care should be designed around the Child Care Center licensing requirement of a minimum 35 sq. ft. per child. This calculation of child care area can include the living room, dining room, and family/child care room. The child care area calculation should not include the kitchen, bathrooms, storage, hallways or bedrooms. For example, a typical affordable multi-family three bedroom townhouse might include a total of 1,050 sq. ft., with the dining room and living room accounting for about 250 sq. ft. of the total. A Family Child Care home designed for 14 children would require a total of 490 sq. ft. of child care area; 250 sq. ft. of this space would be the typical living room/dining room with a remaining requirement for an additional 240 sq. ft. of child care space. So a typical three bedroom townhouse would need to be expanded from 1,050 sq. ft. to 1,290 sq. ft.
- The amount of outdoor space is somewhat flexible as there is no licensing requirement. Child care centers are required to have a minimum of 75 sq. ft. per child. A reasonable requirement for

Resources:

**Santa Cruz County Office of Education
Child Development Resource Center**
(831) 479-5283

809-H Bay Ave.
Capitola, CA 95010
www.cdrc4info.org

Child Care Law Center
(415) 495-5498

973 Market St., Suite 550
San Francisco, CA 94103
www.childcarelaw.org

Enterprise Child Care
(503) 223-4848

1020 SW Taylor St., Suite 800
Portland, OR 97205
Rshine@enterprisefoundation.org
www.enterprisefoundation.org

Local Initiatives Support Corporation
(415) 397-7322

369 Pine St., Suite 350
San Francisco, CA 94104
www.liscnet.org

National Economic Development and Law Center
(510) 251-2600

2201 Broadway, Suite 815
Oakland, CA 94612
www.nedlc.org

Are there any changes to the entire development required to accommodate Family Child Care?

- Family Child Care might be 50 sq. ft. per child or 700 sq. ft. of fenced play area for 14 children.
- As a general rule, open floor plans with direct lines of sight will help ensure easy supervision.
 - Allow as much extra storage as possible both interior and exterior (not counted in sq. ft. requirements) including a large entry closet or some alternative way of storing children's belongings. It might be that some of the storage space could be located in a separate storage building or "play house" in the yard.
 - Allow as much natural light as possible.
 - The child care space should be fully handicapped accessible, including the entry, bathrooms, kitchen and outdoor play areas.
 - Include one full bath with space suitable for a changing table.
 - Provide a washer, dryer, large refrigerator, and dishwasher.
 - If possible, provide shared access to fax machines, computers and a copy machine either at the project office or community center.
 - Offer a covered porch/patio for shade.
 - Include gates between adjacent Family Child Care play yards.
 - If the project involves rehabilitation rather than new construction careful consideration should be given to any lead abatement issues.

Location of a Family Child Care unit (or units) within the development is a key consideration. The unit should be easy to get to – both for parents within the development and outsiders dropping their children off. Traffic impacts are another major concern. Family Child Care units should be located close to time-limited guest parking to facilitate drop off and pick up. Security systems should take into account a limited amount of regular, outside traffic to the building during peak hours due to child care. To the extent possible, the Family Child Care units should be located adjacent to each other to maximize communication and assistance between providers. This may also allow for some creative design around shared entry pathways and visitor parking. It may also help to reduce the overall impact of the child care homes on their immediate neighbors. Providing easy access to common areas and playground equipment within the housing development is also suggested.

