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Model Zoning Regulations for Child Care Facilities in Michigan

Introduction

In 2023, Ann Arbor Spark, with assistance from Public Sector Consultants, convened the Livingston and Washtenaw Counties Child Care Coalition. The coalition was composed of prospective and current child care providers, economic development professionals, policymakers, family representatives, and others. Over the course of a year, the group engaged the community to better understand child care challenges facing the region and identify solutions. The resulting report, "Caring for Our Future: A Regional Action Plan to Expand Child Care Access in Livingston and Washtenaw Counties", identifies advocating "for local policy change related to zoning and development" as policy change that can be achieved in the short- and medium-term to promote a friendlier environment for child care providers.

To assist municipalities with zoning changes to make it easier for child care providers to open and expand programs, Ann Arbor Spark asked Carlisle|Wortman Associates, Inc. (CWA) to develop model child care provider zoning regulations. CWA is a planning consulting firm that has been serving exclusively governmental and non-profit entities, including dozens of Livingston and Washtenaw County municipalities, for over 35 years.

The following report presents model regulations with discussion and notes and provides the background and authority for the regulating child care uses in Michigan law.

Model Regulations and Discussion

The following model zoning regulations are intended to provide guidance to communities regarding how their local Zoning Ordinance may be amended to promote a friendlier environment for child care providers while meeting the requirements of Michigan law, specifically the [Michigan Zoning Enabling Act](#) (Public Act 110 of 2006, as amended) and the [Child Care Organizations Act](#) (Public Act 116 of 1973, as amended). While the model provides suggested language, a community may certainly tailor the language to meet more specific conditions and circumstances if it does not conflict with the Michigan Zoning Enabling Act (MZEA).

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There are three (3) general areas that may require amendment in the Zoning Ordinance: Definitions, Districts Permitted, and Standards. Discussion and model language for each are provided below.

Definitions

Clear definitions are essential to understanding more specific regulations in a Zoning Ordinance. It is important to ensure that definitions do not conflict with the MZEA or other applicable statutes.

The model language below should be used to update existing definitions in a municipality's Zoning Ordinance or added to the definition section of the Zoning Ordinance:

Child care facility. The following definitions shall apply in the application of this Ordinance:

- (1) **Child day care center.** A facility, other than a private residence, receiving more than one (1) or more children for care and supervision for periods less than twenty-four (24) hours, and where the parents or guardians are not immediately available to the child.
- (2) **Child family day care home.** A private home in which one (1) but fewer than seven (7) minor children are received for care and supervision for periods of less than twenty-four (24) hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term “family day care home” includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year. The total number of children receiving care may be modified when increased capacity, as defined herein, is granted by the State.
- (3) **Child group day care home.** A private home in which more than six (6) but not more than twelve (12) minor children are given care and supervision for periods of less than twenty-four (24) hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term “group day care home” includes a home in which care is given to an unrelated minor child for more than four (4) weeks during a calendar year. The total number of children receiving care may be modified when increased capacity, as defined herein, is granted by the State.
- (4) **Private home.** A private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency.

- (5) **Increased capacity.** The addition of one (1) child in a family day care home and two (2) children in a group day care home when granted by the State of Michigan in accordance with Act 116 of 1973, as amended.

Districts Permitted

Counties and townships are required by the MZEA to allow state licensed family day care homes as a permitted residential use of property in all residential districts. While cities and villages are not required to allow state licensed family day care homes as a permitted residential use, there is nothing that prohibits them from doing so as a matter of zoning policy.

Counties and townships have authority to regulate group day care homes as a special or conditional use in residential districts. However, the MZEA Section 206 (4) requires that the special or conditional use for a group day care home be approved if the standards set forth in Section 206 (4)(a) – (f) of the MZEA are met. These standards have been enumerated in the Background and Authority section at the end of this document.

Cities and villages are given more discretion in the approval of group day care homes. Section 206, subsection (5) of the MZEA states that “For a city or village, a group child day care home may be issued a special use permit, conditional use permit, or other similar permit.”

A model schedule of use regulations for child care facilities is as follows: **(note - actual districts will vary by community.)**

State-licensed residential child care facilities							
District Use Table	Single-Family	Multiple-Family	Office	Local Business	General Business	Industrial	Supplemental Regulation
Family day care homes	P	P	NP	NP	NP	NP	Subject to the standards in Section _____.
Group day care homes	SLU	SLU	NP	NP	NP	NP	Subject to the standards in Section _____.
Day care center	SLU	SLU	P	P	P	SLU	Subject to the standards in Section _____.

P – Permitted Use
 NP – Not Permitted
 SLU – Special Land Use

Standards

The MZEA authorizes a municipality to apply more detailed standards to specific uses, even if the use is treated as a permitted or special land use. In the case of a permitted use, if the standards are met, the use must be approved. In the case of a special use, the approving body of the municipality generally has greater discretion for approval, even with the limitations that are in the MZEA. For example, Section 206 (4) (c) of the MZEA indicates that the property for a child care facility be maintained in a manner “consistent with the visible characteristics of the neighborhood.” The determination of whether such a standard is met would require the exercise of judgement or discretion on the part of the approving body.

Any standards that are adopted must be consistent with the purpose of the Zoning Ordinance and designed to protect public health, safety, and welfare. In the case of child care facilities, standards should address two (2) overarching objectives:

- The health and safety of the individuals, particularly the children, in accessing and occupying the facility.
- The compatibility of the facility with the surrounding neighborhood and protection of neighboring properties from any nuisances created by the proposed facility.

Model Zoning Ordinance standards for child care facilities are:

SECTION ____ CHILD CARE FACILITIES

A. General Standards.

- (1) It is the intent of this section to establish standards for day care facilities that will ensure compatibility with adjacent land uses and maintain the visible character of the neighborhood.
- (2) A state licensed family day care home shall be considered a residential use of property and a permitted use in all residential districts.

B. Standards for Child Day Care Facilities.

- (1) Child Group Day Care Homes.
 - (a) A group day care home shall be located no closer than one thousand five hundred (1,500) feet to any of the following facilities **(note - the MZEA spacing requirements only apply to counties and townships. Using similar spacing standards in a city or village are not required and would be impractical.):**

- (i) Another licensed group day care home;
 - (ii) An adult foster care small or large group home licensed by the state;
 - (iii) A facility offering substance abuse treatment and rehabilitation service to seven (7) or more people that is licensed by the state;
or
 - (iv) A community correction center, resident home, halfway house, or other similar facility that houses an inmate population under the jurisdiction of the department of corrections.
- (b) The subject parcel shall meet the minimum lot area requirements for the zoning district in which it is located;
- (c) The property is maintained in a manner that is consistent with the character of the neighborhood;
- (d) A safe means of drop-off and pick-up of children shall be provided on site, separated from a public street and shall be of sufficient size so as to not create congestion on the site or within a public roadway; ***(note - most child care facilities require children to be accompanied into the facility by a parent or caregiver. Therefore, appropriate drop-off and pick-up may be provided with parking spaces or area within a driveway in reasonable proximity to the building entrance.)***
- (e) There shall be an outdoor play area that is a minimum of six hundred (600) square feet, or fifty (50) square feet per child, whichever is greater. The outdoor play area shall not be located in the required front yard setback. This requirement may be waived by the Planning Commission if a public open space is within five hundred (500) feet of the subject parcel; ***(note - State administrative rules require a minimum of six hundred (600) square feet of outdoor play space which, based on a maximum enrollment of twelve (12) children, is fifty (50) square feet per child. A community may adopt a formula that increases the size of outdoor play space should a group day care home be allowed "increased capacity" by the State.)***
- (f) All outdoor play areas shall be enclosed by a fence that is designed to discourage climbing and is at least four (4) feet in height, but no higher than six (6) feet;

- (g) The hours of operation do not exceed sixteen (16) hours within a twenty-four (24) hour period, with a limitation on activity between the hours of 10:00p.m. and 6:00a.m.;
 - (h) One (1) off-street parking space per employee not a member of the group day care home family shall be provided;
 - (i) Inspection for compliance with these standards shall be conducted by the (city, village, county, or township) prior to occupancy and once every twelve (12) months thereafter within ten (10) days of the anniversary of the certificate of occupancy;
 - (j) No exterior identification sign shall be permitted; ***(note - a community may permit a small announcement sign similar to those permitted for home occupations.)***
 - (k) Appropriate licenses with the state shall be maintained; and
 - (l) Subsequent establishment of any facilities listed in subsection B.1.a. of this section, within one thousand five hundred (1,500) feet of the licensed or registered group day care home will not affect any subsequent special land use permit renewal pertaining to the group day care home. ***(note - this item is not required by the MZEA in a city or village)***
- (2) Child Day Care Centers.
- (a) A safe means of drop-off and pick-up of children shall be provided on site, separated from a public street and an internal parking access lane, and shall be of sufficient size so as to not create congestion on the site or within a public roadway; ***(note - most child care facilities require children to be accompanied into the facility by a parent or caregiver. Therefore, appropriate drop-off and pick-up may be provided with parking spaces in reasonable proximity to the building entrance.)***
 - (b) Off-street parking shall be provided at a rate of one (1) space per employee plus one (1) space for every five (5) children based upon enrollment in the facility; ***(note - it is important to understand the actual operation of any child care facility. Not all children enrolled in the facility are present at the same time. Therefore, there should be adequate parking to accommodate overlapping times of drop-off and pick-up.)***

- (c) There shall be an outdoor play area that is a minimum of twelve hundred (1,200) square feet or fifty (50) square feet per child, whichever is greater. The outdoor play area shall not be located within the required front setback area. This requirement may be waived by the Planning Commission if public open space is available five hundred (500) feet from the subject parcel; ***(note - State administrative rules require a minimum of one thousand-two hundred (1,200) square feet of outdoor play space but provides no specific standards for play space per child. Therefore, a day care with one hundred (100) children may be required by the State to have the same play area as a day care with twenty-five (25) children. Requiring a more definitive standard in a local zoning code would not conflict with the MZEA and basing on a formula of space per child is a reasonable approach.)***
- (d) All outdoor play areas shall be enclosed by a fence that is designed to discourage climbing, and is at least four (4) feet in height, but no higher than six (6) feet;
- (e) In single-family residentially zoned districts, a day care center shall only be located on a major or minor thoroughfare as designated in the Master Plan. The Planning Commission may waive this requirement if the proposed child day care center is located within an existing use such as a school or place of worship; ***(note - A requirement of this nature is intended to ensure that day care centers are in locations which are compatible with residential neighborhoods, primarily due to traffic and activity. However, child day care centers are frequently co-located in other uses that are found in neighborhood settings.)***
- (f) Appropriate licenses with the state shall be maintained.

Background and Authority

The State of Michigan regulates day care centers and family and group day care homes under the broad authority of the Child Care Organizations Act, Act 116 of 1973, as amended (referred to as the Act). The Act provides for the protection of children through the licensing and regulation of child care organizations, including family and group day care homes and child care centers. The regulatory provisions of the Act are implemented through separate administrative rules.

Local regulation of child care facilities in Michigan is governed by the Michigan Zoning Enabling Act, Act 110 of 2006, as amended. [Section 206 of the MZEA](#) has different requirements that apply to counties (where county zoning is present) and townships, as opposed to cities and villages in the regulation of child care facilities.

More specifically, **Section 206 Subsections 3-10** of the MZEA states the following regarding local regulation of child care facilities:

- (3) *For a county or township, a family child care home is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.*

- (4) *For a county or township, a group child care home shall be issued a special use permit, conditional use permit, or other similar permit if the group child care home meets all of the following standards:*
 - (a) *Is located not closer than 1,500 feet to any of the following:*
 - (i) *Another licensed group child care home.*
 - (ii) *An adult foster care small group home or large group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.*
 - (iii) *A facility offering substance use disorder services to seven (7) or more people that is licensed under part 62 of the public health code, 1978 PA 368, MCL 333.6230 to 333.6251.*
 - (iv) *A community correction center, resident home, halfway house, or other similar facility that houses an inmate population under the jurisdiction of the department of corrections.*
 - (b) *Has appropriate fencing for the safety of the children in the group child care home as determined by the local unit of government.*
 - (c) *Maintains the property consistent with the visible characteristics of the neighborhood.*
 - (d) *Does not exceed sixteen (16) hours of operation during a twenty-four (24) hour period. The local unit of government may limit but not prohibit the operation of a group child care home between the hours of 10 p.m. and 6 a.m.*

- (e) *Meets regulations, if any, governing signs used by a group child care home to identify itself.*
- (f) *Meets regulations, if any, requiring a group child care home operator to provide off-street parking accommodations for his or her employees.*
- (5) *For a city or village, a group child care home may be issued a special use permit, conditional use permit, or other similar permit.*
- (6) *A licensed or registered family or group child care home that operated before March 30, 1989 is not required to comply with this section.*
- (7) *This section does not prohibit a local unit of government from inspecting a family or group child care home for the home's compliance with and enforcing the local unit of government's Zoning Ordinance. For a county or township, an ordinance shall not be more restrictive for a family or group child care home than 1973 PA 116, MCL 722.111 to 722.128.*
- (8) *The establishment of any of the facilities listed under subsection (4)(a) after issuance of a special use permit, conditional use permit, or other similar permit pertaining to the group child care home does not affect renewal of that permit.*
- (9) *This section does not prohibit a local unit of government from issuing a special use permit, conditional use permit, or other similar permit to a licensed group child care home that does not meet the standards listed under subsection (4).*
- (10) *The distances required under subsection (4)(a) shall be measured along a road, street, or place maintained by this state or a local unit of government and generally open to the public as a matter of right for the purpose of vehicular traffic, not including an alley.*

Recent Amendments to the Child Care Licensing Act

The Child Care Licensing Act was amended and signed into law by the Governor in June of 2022 to contain a provision allowing for increased capacity in family and group day care homes. Family day care homes may increase capacity by one (1) additional child and group day care homes may increase capacity by two (2) additional children when licensed for at least twenty-nine (29) months, along with other criteria listed below. Although the MZEA was not amended to reflect similar language, the amendment to the Child Care Licensing Act is binding on the issue of increased capacity. Further, the State is not required to inform communities when they have granted increased capacity. Therefore, communities should consult with their planner and legal counsel to determine if a revision to the Zoning Ordinance is needed to comply with this amendment to the Act.

Specifically, the amendment to the Child Care Licensing Act does the following:

- Specifies that family childcare home or a group childcare home would be automatically eligible for increased capacity (i.e., one (1) additional child in a family childcare home and two (2) additional children in a group childcare home) if the home satisfied certain criteria, such as being licensed to operate for at least twenty-nine (29) consecutive months.
- Allows the Department of Licensing and Regulatory Affairs (LARA) to rescind increased capacity because of corrective action, licensing action, or a determination from LARA that increased capacity was not conducive to the welfare of children.
- Allows a family childcare home or group childcare home to become eligible again for increased capacity after twenty-two (22) months if LARA rescinded its increased capacity.
- Requires an applicant for a childcare center license to disclose its ownership interest in the childcare center as prescribed by the bill.
- Modifies the definition of “childcare staff member” to reduce the minimum age of a staff member from eighteen (18) years old to sixteen (16) years old.