



**CITY OF BELMONT  
MEMORANDUM**

**TO:** Planning Commission

**FROM:** Carlos de Melo, Community Development Director

**SUBJECT:** October 4, 2011 Planning Commission Meeting – Agenda Item 6A  
Discussion Regarding Large Family Daycare Operations Ordinance

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**SUMMARY/BACKGROUND**

One of the Community Development projects on the Council's Priority Calendar for FY11-12 is the review and development of an Ordinance regulating large family daycare (LFDC) operations in Residential Zoning Districts.

The City Council previously reviewed the matter in a *Discussion & Direction* format at their August 23, 2011 meeting; staff has provided the 8/23/11 City Council Staff Report – see Attachment I.

In advance of preparing a Draft Ordinance for the item, staff believes it appropriate to also begin discussion on this topic and solicit feedback from the Planning Commission. After receiving Commission comments on the matter, staff will continue to move forward with work efforts, and preparation of LFDC text amendments for consideration and adoption by the Planning Commission & the City Council.

**DISCUSSION**

At the 8/23/11 City Council meeting, the Council reviewed three options for crafting of the LFDC Ordinance. These options were as follows:

**Option1** – Classify large family day care (LFDC) uses as a permitted use of residential property for zoning purposes – no additional criteria, standards, or development requirements to establish this use.

**Option 2** – Allow a nondiscretionary permit to be reviewed and granted to use a lot zoned for a single-family dwelling to a large family day care (LFDC) home. The LFDC must comply with local ordinances prescribing reasonable standards, restrictions, and requirements concerning 1) spacing and concentration, 2) traffic control, 3) parking, and 4) noise control relating to those homes, and any regulations adopted by the State Fire Marshal pursuant to this use. The permit issued shall be granted by the Zoning Administrator (i.e. Community Development Director) without a hearing.

**Option 3** – Require any large family day care (LFDC) home to apply for a use permit to use a lot zoned for single-family dwellings. The Zoning Administrator (i.e. Community Development Director), shall review and decide the application. The use permit shall be granted if the LFDC home complies with locally prescribed reasonable standards, restrictions, and requirements concerning the same four factors: spacing/concentration, traffic control, parking, and noise control relating to those homes, and any regulations adopted by the State Fire Marshal pursuant to this use. 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.

Under this option, the Zoning Administrator has the authority to provide public notice of the proposed LFDC use by mail to all property owners within a 100-foot radius of the exterior boundaries of the proposed LFDC home. This notice must be provided not less than 10 days prior to the Zoning Administrator decision date of the LFDC use permit application. A hearing on the use permit application shall not be held unless 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.

At the conclusion of their discussion of the matter at the 8/23/11 meeting, the Council provided direction to pursue Option 3 in concert with the Draft Ordinance language. The Council also directed staff to research establishing other LFDC development standards such as building height, setback, lot dimensions, building standards, environmental impact standards, etc. These standards can be established as long as such restrictions are identical to those applied to other single-family residences.

As such, staff is seeking Commission input related to the LFDC Ordinance as appropriate; such feedback will assist in the preparation of the draft text language for this item. As noted earlier, the LFDC text amendments will be subject to future public hearing review by the Planning Commission & the City Council.

## **PUBLIC CONTACT**

No other public contact beyond posting of the agenda was initiated by the City in preparation of tonight's item.

## **ATTACHMENTS**

- I. August 23, 2011 City Council Staff Report
- II. Public Correspondence

**ATTACHMENT I**

August 23, 2011 City Council Staff Report



## **Staff Report**

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### **DISCUSSION AND DIRECTION REGARDING ORDINANCE REGULATING LARGE FAMILY DAYCARE OPERATIONS**

Honorable Mayor and Council Members:

#### **Summary/Background**

On November 9, 2010, staff presented to City Council a scope of activities (i.e., work plan and number of staff hours necessary) to research the development of an Ordinance that would regulate the establishment of large family daycare operations in Residential Zoning Districts.

At that 11/9/10 meeting, the Council considered the project/scope of work and continued the item for discussion/ranking as part of the Council's Spring 2011 Priority Calendar review. At the conclusion of the Council's Priority Calendar process in April 2011, this item was added to the Community Development Department list for review, processing, and completion.

In advance of preparing a Draft Ordinance for the item, staff is seeking preliminary Council feedback on potential text language (scope, content, applicability) relating to this issue. From the Council's direction at tonight's meeting, staff will move forward with an action plan for staff work efforts, and preparation of such text amendments for consideration and adoption by the Planning Commission & the City Council.

#### **Discussion**

Family child care homes provide child care in the home of the provider and are described as small or large, depending on the number and ages of children cared for and the number of caregivers. Small Family child care homes may care for up to eight (8) children. Large Family child care homes may serve up to 14 children.

As noted earlier, the City does not have an Ordinance regulating large family daycare facilities. Currently, these types of uses have received their approvals (i.e. licenses) to operate via the State of California's Community Care Licensing (CCLD) Division – [www.cclld.ca.gov](http://www.cclld.ca.gov). Review of the CCLD website indicates that there are currently nine licensed large family daycare facilities within the City of Belmont. Discussion with CCLD staff indicates that each facility is licensed to an individual at a specific location (i.e., the license does not travel with the property owner/operator to a different location, and the license to operate does not run with the land to future property owners).

Local regulation of day care homes is provided for in California State Health and Safety Code (CSHSC) Section 1597.46 (see attached code). In summary, this section limits the discretion of cities and counties to restrict large family day care homes on lots zoned for single family residences. Zoning restrictions on large family day care homes must embody reasonable standards, restrictions, or requirements related to the following four factors: 1) spacing/concentration, 2) traffic control, 3) parking, and 4) noise control. Restrictions that are not reasonable or are not related to those factors are not allowed under state law.

As such, and as permitted under CSHSC Section 1597.46, the City does have the discretion to establish regulations regarding these facilities as follows – three options:

**Option 1** – Classify large family day care (LFDC) uses as a permitted use of residential property for zoning purposes – no additional criteria, standards, or development requirements to establish this use.

**Option 2** – Allow a nondiscretionary permit to be reviewed and granted to use a lot zoned for a single-family dwelling to a large family day care (LFDC) home. The LFDC must comply with local ordinances prescribing reasonable standards, restrictions, and requirements concerning 1) spacing and concentration, 2) traffic control, 3) parking, and 4) noise control relating to those homes, and any regulations adopted by the State Fire Marshal pursuant to this use. The permit issued shall be granted by the Zoning Administrator (i.e. Community Development Director) without a hearing.

**Option 3** – Require any large family day care (LFDC) home to apply for a use permit to use a lot zoned for single-family dwellings. The Zoning Administrator (i.e. Community Development Director), shall review and decide the application. The use permit shall be granted if the LFDC home complies with locally prescribed reasonable standards, restrictions, and requirements concerning the same four factors: spacing/concentration, traffic control, parking, and noise control relating to those homes, and any regulations adopted by the State Fire Marshal pursuant to this use. 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.

Under this option, the Zoning Administrator has the authority to provide public notice of the proposed LFDC use by mail to all property owners within a 100-foot radius of the exterior boundaries of the proposed LFDC home. This notice must be provided not less than 10 days prior to the Zoning Administrator decision date of the LFDC use permit application. A hearing on the use permit application shall not be held unless 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.

Staff requests Council provide feedback/direction on the three options described above.

### **Other Considerations**

As permitted under CSHSC Section 1597.47, local jurisdictions are not precluded from placing other development restrictions on large family day care uses such as building height, setback, lot dimensions, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity as long as such restrictions are identical to those applied to other single-family residences.

In this regard, and to create consistency with Belmont's current home occupation requirements, staff would recommend establishing other LFDC development standards – an example can be the maximum percentage of the single family dwelling used for the LFDC facility or a maximum number of employees used in the conduct of the LFDC. It should be noted, however, that any recommended LFDC development standard must be consistent with CSHSC statutes.

Staff further requests Council feedback/direction as related to potential additional LFDC development standards.

A connected task for this project will involve assessment of the city's current Business License and Home Occupation standards to ensure permitting efficiency. As noted above, staff also anticipates text modifications to the Home Occupation requirements/standards to create consistency with the Large Family Day Care Ordinance language. Staff will also conduct public outreach, and coordinate the public hearings for the item.

### **Fiscal Impact**

As noted in previous Council staff reports on this topic, the cost of preparation of background information, and the Ordinance would involve approximately 100 hours of staff time. Staff time processing applications for large family daycare permits is anticipated to be covered by permit processing fees submitted for each application.

### **Public Contact**

This matter was placed on the agenda and posted as required by the California Government Code.

### **General Plan/Vision Statement**

Establishing a potential Ordinance as related to *Large Family Day Care Operations* furthers the City's General Plan Goals/Vision Statement as follows:

#### **General Plan Goal 1015.2**

*"To preserve and enhance the attractive, family-oriented and tranquil quality of Belmont's residential neighborhoods."*

#### **Vision Statement - Distinctive Community Character**

*"We get involved in town matters because we care about living here."*

**Recommendation**

Staff recommends that the Council review the issues in this staff report and provide direction as detailed above.

**Alternatives**

- I. Suspend the *Large Family Day Care Ordinance* Priority Calendar Project at this time.
- II. Refer back to staff for additional information.

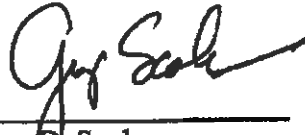
**Attachments**

- A. California Health and Safety Code Section 1597.40 -1597.46

Respectfully submitted,



Carlos de Melo  
Community Development Director



Greg D. Scoles  
City Manager

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**ATTACHMENT A**

**California Health and Safety Code Sections 1597.40 -1597.46**

(h)(1) If the department, for any reason, is unable to comply with subdivision (g), it shall, within 30 days of the receipt of the application described in subdivision (g), grant a provisional license to the applicant to operate for a period not to exceed six months. The provisional license shall be granted provided the department has conducted a site visit and has not found any life safety risks, the criminal records clearances are complete, and the school fire inspection has been verified. The requirement for criminal records clearances may be satisfied by transfer of current criminal records clearances, pursuant to subdivision (g) of Section 1596.871. For purposes of a schoolage day care program operating on a functioning school site, the school fire inspection shall be accepted as sufficient fire clearance.

(2) While a provisional license is in effect, the department shall continue its investigation and shall make a final determination on the application prior to the expiration of the provisional license. If the department does not issue a provisional license pursuant to paragraph (1), the department shall follow the procedures for notifying applicants as set forth in subdivision (d) of Section 1596.96.

### **Chapter 3.6. FAMILY DAY CARE HOMES**

#### **§ 1597.30. Legislative findings and declarations**

The Legislature finds and declares:

(a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.

(b) That there are insufficient numbers of regulated family day care homes in California.

(c) There will be a growing need for child day care facilities due to the increase in working parents.

(d) Many parents prefer child day care located in their neighborhoods in family homes.

(e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.

(f) That the program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family day care homes, while not placing undue burdens on the providers.

(g) That the state should maintain an efficient program of regulating family day care homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.

#### **§ 1597.36. Loan guarantee application request; need for repairs, renovations, or additions; documentation**

The department shall provide written documentation to providers of the need for repairs, renovations, or additions when requested for an application for a loan guarantee pursuant to subdivision (d) of Section 8277.6 of the Education Code whenever the repairs, renovations, or additions are required by the department in order for the licensee to maintain or obtain a license for more than six children.

**§ 1597.40. Public policy to provide home environment; restriction governing real property**

(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, upon 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.

(5) Section 1596.890 shall not apply to this subdivision.

**§ 1597.43. Legislative findings and declarations; congregate care facilities distinguished**

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.

**§ 1597.44. Small family day care homes; number of children**

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 one child is enrolled in and attending kindergarten or elementary school and a second child is 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.

**§ 1597.45. Small family day care homes**

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.

#### **§ 1597.46. Large family day care homes**

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 those homes, and complies with subdivision (e) 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, or if there is no zoning administrator by the person or persons designated by the planning agency to grant these 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, 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 the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes, and complies with subdivision (e) 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.

Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. Beginning July 1, 2007, the application form for large family day care home permits shall include a statement of the applicant's right to request the written fee verification.

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 the 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. A hearing on the application for a permit issued pursuant to this paragraph shall not 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) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) 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.

(d) 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.

(e) 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 Code of Regulations. 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) specification 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.

(f) The State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement this section.

#### **§ 1597.465. Large family day care homes; number of children**

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 one child is enrolled in and attending kindergarten or elementary school and a second child is 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.

**§ 1597.467. Injury or acts of violence reporting requirements**

(a) Whenever any licensee under this chapter has reasonable cause to believe that a child in his or her care has suffered any injury or has been subjected to any act of violence while under the licensee's care, the licensee shall, as soon as possible, report that injury or act of violence to the parent, parents, or guardian of that child.

(b)(1) A report shall be made to the department by telephone or fax during the department's normal business hours before the close of the next working day following the occurrence during the operation of a family day care home of any of the following events:

(A) Death of any child from any cause.

(B) Any injury to any child that requires medical treatment.

(C) Any unusual incident or child absence that threatens the physical or emotional health or safety of any child.

(2) In addition to the report required pursuant to paragraph (1), a written report shall be submitted to the department within seven days following the occurrence of any events specified in paragraph (1). The report shall contain all of the following information:

(A) Child's name, age, sex, and date of admission.

(B) Date and nature of the event.

(C) Attending physician's name and findings and treatment, if any.

(D) Disposition of the case.

(c) The department may develop the report form to be used for reporting purposes pursuant to this section, and shall maintain all reports filed under this section in a manner that allows the department to report the data to the Legislature.

(d) The failure of a licensee to report, as prescribed by this section, any injury of, or act of violence to, a child under the licensee's care may be grounds for the suspension of his or her license pursuant to this chapter, but shall not constitute a misdemeanor.

(e) Nothing in this section shall relieve any licensee of any obligation imposed by other law including, but not limited to, laws relating to seeking medical attention for a child or reporting suspected child abuse.

**§ 1597.47. Local public entities; restrictions on building heights, setbacks, or lot dimensions; application of local ordinances; abatement of nuisances**

The provisions of this chapter shall not be construed to preclude any city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family day care facility as long as such restrictions are identical to those applied to other single-family residences. The provisions of this chapter shall not be construed to preclude the application to a family day care facility for children of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. The provisions of this chapter also shall not be construed to prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, such ordinance or nuisance abatement shall not distinguish family day care facilities from other single-family dwellings, except as otherwise provided in this chapter.

**§ 1597.52. Limitation on licensing reviews to health and safety considerations; experience requirement for provider of large family day care home**

(a) Licensing reviews of a family day care home for children shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training programs of the facility.

(b) No home shall be licensed or registered as a large family day care home after January 1, 1984, unless the provider has at least one year's experience as a regulated small family day care home operator or as an administrator of a licensed day care center. The director may waive this requirement upon a finding that the applicant has sufficient qualifying experience.

**§ 1597.53. Licensure; law governing**

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

**§ 1597.531. Liability insurance or bond; affidavits; additional insured parties**

(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 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.

#### **§ 1597.54. Application for license**

All family day care homes for children, shall apply for a license under this chapter, except that any home which on June 28, 1981, had a valid and unexpired license to operate as a family day care home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license at which time a new license may be issued upon fulfilling the requirements of this chapter.

An applicant for licensure as a family day care home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) A brief statement confirming that the applicant is financially secure to operate a family day care home for children. The department shall not require any other specific or detailed financial disclosure.

(b)(1) Evidence that the small family day care home contains a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal under subdivision (d) of Section 1597.45, or evidence that the large family day care home meets the standards established by the State Fire Marshal under subdivision (d) of Section 1597.46.

(2) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(c) The fingerprints of any applicant of a family day care home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(d) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care.

(e) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(f) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Other information as may be required by the department for the proper administration and enforcement of the act.

**§ 1597.541. Age-appropriate immunization requirements; adoption of regulations**

(a) The department shall adopt regulations regarding age-appropriate immunization requirements for enrolled children for family day care homes.

(b) All family day care homes for children shall maintain evidence that enrolled children have met the age-appropriate immunization requirements adopted pursuant to this section.

**§ 1597.542. Regulations; degrees of violations; implementation**

(a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

**§ 1597.55a. Unannounced visits; announced site visits prior to initial licensing; circumstances under which annual unannounced site visits to are conducted; spot checks**

Every family day care home shall be subject to unannounced visits by the department as provided in this section. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(a) The department shall conduct an announced site visit prior to the initial licensing of the applicant.

(b) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer in the facility.

(c)(1) The department shall conduct annual unannounced visits to no less than 20 percent of facilities not subject to an evaluation under subdivision (b). These unannounced visits shall be conducted based on a random sampling methodology developed by the department.

(2) If the total citations issued by the department exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by 10 percent of the facilities not subject to an evaluation under subdivision (b). The department may request additional resources to increase the random sample by 10 percent.

(d) Under no circumstances shall the department visit a licensed family day care home less often than once every five years.

(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(f) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a follow-up visit as provided in Section 1596.853.

(g) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which the family day care services are provided or to which the children have access.

(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

**§ 1597.55b. Site visits; unannounced visits or spot checks; annual visits on all licensed family day care homes; Implementation**

No site visits, unannounced visits, or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.

(c) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a follow up visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(e) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b) and (c).

(f) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

**§ 1597.56. Noncompliance; written notice; civil penalties; plan of correction; regulations**

(a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home. Upon a finding of noncompliance with a plan of correction, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulation establishing procedures for the imposition of civil penalties under this section.

#### **§ 1597.57. Applications forms, consumer education program; orientation program**

The department shall do all of the following:

(a) Develop and utilize one application form for all family day care homes for children requesting a new license.

(b) Establish for parents a consumer education program annually on the law and regulations governing family day care homes for children under this chapter and the role of the state and other public entities and local associations in relation to family day care homes for children. In planning this program, the department shall seek the assistance of other public entities and local associations.

(c) Administer an orientation program for new operators of family day care homes for children that may be conducted directly by the department or by contract with local governments or family day care home associations.

#### **§ 1597.58. Civil penalties**

(a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

(c) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56, and 1597.62 the department shall assess an immediate civil penalty of one hundred fifty dollars (\$150) per day per violation for any of the following serious violations:

(1) Any violation that results in the injury, illness, or death of a child.

(2) Absence of supervision, including, but not limited to, a child left unattended, a child left alone with a person under 18 years of age, and lack of supervision resulting in a child wandering away.

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Sections 1596.852, 1596.853, 1597.55a and 1597.55b.

(6) The presence of an excluded person on the premises.

(d) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56 and 1597.62, any family day care home that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is subject to an immediate civil penalty assessment of up to one hundred fifty dollars (\$150) and may be assessed up to fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

(e) Any family day care home that is assessed a civil penalty under subdivision (d) that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall

be assessed an immediate assessment of up to one hundred fifty dollars (\$150) and may be assessed up to one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

(f) Notwithstanding any other provision of law, revenues received by the state from the payment of civil penalties imposed on licensed family day care homes pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed family day care home providers.

#### **§ 1597.59. Disposition of license application; conditions; site visits**

The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision(b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency. The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

#### **§ 1597.61. Operation without license; notice; cease and desist order; action to enjoin; conduct of prosecution**

(a) When the department determines that a family day care home for children is operating without a license and notifies the unlicensed provider of the requirement for the license, the licensing agency may issue a cease and desist order only if it finds and documents that continued operation of the facility will be dangerous to the health and safety of the children or if a license held by the facility has been revoked by the department within two years preceding the determination of unlicensed operation. In all other cases where the licensing agency determines such a facility is operating without a license and notifies the unlicensed provider of the requirements for the license, the licensing agency may issue a cease and desist order only if the unlicensed provider does not apply for a license within a reasonable time after the notice.

(b) If an unlicensed family day care home fails to respond to a cease and desist order issued pursuant to subdivision (a), or if the department determines it necessary to protect the immediate health and safety of the children, the licensing agency may bring an action to enjoin such a home from continuing to operate pursuant to Section 1596.89.

(c) The district attorney of a county shall, upon application by the department, institute and conduct the prosecution of any action brought by the licensing agency against an unlicensed family day care home located in that county.

#### **§ 1597.62. Civil penalties; uncorrected violations; implementation**

(a) The department may impose civil penalties of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50) per day per violation for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Sections 1596.893b and 1597.56.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code

#### **§ 1597.621. License for the pilot project registrants; requirements; complaint and revocation procedures**

Family day care homes that, on December 31, 1983, have a valid unexpired registration to operate as a family day care home for children pursuant to Section 1597.62 in one of the pilot counties shall be deemed to be issued a family day care license effective January 1, 1984. Licensure pursuant to this section shall not require a visit pursuant to the requirement set forth in subdivision (a) of Section 1597.55. However, all other requirements of licensing shall continue to be met. Complaint and revocation procedures may be enforced.

### **CHAPTER 3.65. EMPLOYER-SPONSORED CHILD CARE CENTERS**

#### **Article 1. GENERAL PROVISIONS**

#### **§ 1597.70. Legislative findings and declarations**

The Legislature finds and declares the following:

(a) It is significant that the Santa Clara County Intergovernmental Council has found that due to changes in the labor force and an increase in the child population, 25 percent of the nation's workers must make child care arrangements.

(b) Californians will benefit from investment in child care. According to the House Select Committee on Children, Youth, and Families, one dollar invested in preschool education results in a savings of four dollars and seventy-five cents (\$ 4.75) in social costs.

(c) Allowing and encouraging businesses to open onsite or near site employer-sponsored child care centers has had a number of positive effects for Californians, including reduced job absenteeism, closer parent-child relationships, and increased worker productivity.

## **ATTACHMENT II**

### **Public Correspondence**

**Carlos de Melo**

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**From:** Kerry  
**Sent:** Thursday, August 25, 2011 2:39 PM  
**To:** Carlos de Melo  
**Subject:** Belmont and day care regulation

Hi Carlos,

I unfortunately am a little busy these days to attend city council meetings, so I would like to express my concern that the City is taking it upon itself to regulate day cares. It's already tough enough for parents to find good day care, and I'm quite afraid the unintended consequence of the proposed regulation will be to further restrict the supply of quality facilities. Things like traffic and noise can be resolved by normal housing ordinances and considering the size of these establishments and their limited hours of pick-up/drop-off activity, this proposal really reflects poorly on Belmont.

Unfortunately, the very people this affects (parents, besides the daycare providers) are the least likely to have time to attend City Council meetings.

Sincerely,

Kerry MacDonald

**Carlos de Melo**

**From:** guy carlson  
**Sent:** Tuesday, September 13, 2011 10:58 PM  
**To:** Carlos de Melo  
**Cc:** Coralin Feierbach- Mayor; Dave Warden - Vice Mayor; David Braunstein; Warren Lieberman - Council Member; Christine Wozniak; Greg Scoles  
**Subject:** Fw: New City of Belmont Child Care Operations Ordinance

--- On Tue, 9/13/11, guy carlson

**From:** guy carlson  
**Subject:** New City of Belmont Child Care Operations Ordinance  
**To:** "Carlos De Melo"  
**Date:** Tuesday, September 13, 2011, 10:35 PM

**Reference:** Child Care Licensing  
California State Health & Safety Code Section 1597.46 Option # 3

Mr. Carlos de Melo,

As you draft the new City of Belmont Large Family Day Care (LFDC) Ordinance for review by the City Council please include the following important items:

- # 1. For all LFDC ordinance requirements to be effective a clear and enforceable compliance accountability procedure needs to be established.
- # 2. LFDC Operators be licensed and in good standing with the California State Child Care Licensing Department.
- # 3. Increase from 100 feet to 1000 feet, the notification to neighbors for an individual resident who intends to establish a small or large Day Care Operation. ( In order to have a large family Day Care Operation an operator must first have a Small Family Day Care Operation in good standing for one year).
- # 4. Notification to the City and local residents of an Operators intention to increase from a SFDC to LFDC Operation.
- # 5. Limit to twenty five percent, the amount of square feet of a LFDC Operators residence that may be devoted to LFDC operations.
- # 6. Parking for employee vehicles shall within the LFDC Operators property.
- #7. Comply with the annual Belmont Business License Fee and payment schedule for employees.
- # 8. Limit hours of daily operations. Suggest 8:00am to 5:00pm
- #9 Limit LFDC area location density within the City.
- # 10. Provide the City of Belmont Business License Department proof of compliance with the Federal and State Laws regarding employee payroll records, income tax withholding, 1099 Forms and the California EDD.

Please provide me with a copy of the "New City of Belmont LFDC Ordinance Draft" when ready to present to the Mayor and Council.

Sincerely,  
Guy Carlson

9/15/2011