

MEMO

June 6, 2012

To: Mr. Bruce D. Glasscock, City Manager
Mr. Frank F. Turner, Deputy City Manager

From: Ms. Tina Firgens, Planning Manager

RE: Day Care Centers (In-home)

At the April 23, 2012, City Council meeting, Council Member Davidson requested an update regarding regulations for in-home day care centers. Since mid-2011, the Council has considered three specific use permit requests for in-home day care centers allowing a maximum of 12 children, and all three requests have been denied. Council members voting to deny the requests voiced concerns regarding the magnitude of what they considered to be a commercial operation in a residential area. This memo addresses the city's zoning regulations and how the regulations differ from the State of Texas requirements for in-home day care centers, and present issues for the Council's consideration if ordinance amendments are desired. Additionally, staff seeks direction from the Council as to whether changes should be made to the Zoning Ordinance regarding regulating in-home day care centers.

State and Local Requirements

The State of Texas issues two separate types of license for in-home day care centers – registered and licensed. Registered in-home providers are allowed to care for 6 children for the entire day with an additional 6 children before and after school, as well as when school is not in session (i.e. holidays, summer vacation, in-service days). Licensed in-home providers are allowed to care for up to 12 children for the entire day. In 1993, the city amended its Zoning Ordinance to allow residents to care for up to 12 children for the entire day with the appropriate state license. However, the Council determined that a Specific Use Permit would be required if a caregiver wished to provide care for more than 8 children. Until this past year, the city has enforced the SUP requirement through the years, but only when the operation came to our attention through a complaint.

The city requires a Certificate of Occupancy (CO) for in-home day care center operations. The CO is linked to the fire safety inspection that caregivers must obtain for their state license. During mid-2011, the Building Inspections Department began requiring applicants to specify the number of children on an in-home day care center CO application. As a result of this change, we are finding that a number of in-home day care operators are providing care for more than 8 children but have not pursued SUPs

from the city. It is likely that once the state approves a license, the operators believe that they have met all requirements and do not think about the city having different regulations. As new CO applications are received, the operators are being asked to also petition for the SUP if they provide care for more than 8 children.

Home Occupation Regulations

In addition to the above permitting requirements from the city, in-home day care centers are also subject to Section 3.110 of the Zoning Ordinance, which regulates home occupations. The City has allowed for residents to operate businesses within their homes for many years. The purpose of the home occupation regulations is to allow for a limited amount of activity associated with a resident's business to occur at their place of residence, while still preserving the overall residential neighborhood setting. The home occupation regulations address additional non-resident employees, size limitations within a residence (maximum 20% total square foot area), allows for traffic generation that does not exceed typical neighborhood traffic, and allows for parking to be accommodated in the required off-street parking for the residence and along the street frontage for a property. The regulations also prohibit modifications to a resident's home that alters the residential character of the structure, exterior signage, sale of goods, offensive noises and odors, and storage of materials.

Issues

The following are issues for the Council's consideration regarding regulating in-home day care centers.

1. Until this past year, the city has enforced the current SUP requirement through the years, but only when the operation came to our attention through a complaint. Two specific use permits have been approved in the last decade for this use, and more recently three requests have been denied. Staff has been working with the property owners to bring their businesses into compliance by this August to coincide with the new school year, when children will be proceeding to elementary school.
2. The Property Standards Department receives 6 to 12 complaints per year regarding in-home day care center operations. Complaints received are generally regarding there may be too many children at a residence. Upon investigating the complaints if there are too many children, the operator will reduce the number of children they are caring for rather than go through the SUP process.
3. If the city and state continue to differ regarding the maximum number of children someone is allowed to have by right, the city will continue to have enforcement challenges. The State of Texas allows in-home day care operations for up to 12 children. It is likely that operators, after they have received the state license, do not think about local regulations that may also apply.

4. The city has only regulated licensed in-home day care centers. The city has not regulated registered in-home day care centers even though the operators can have a total of 12 children (6 full time children, plus 6 children before and after school and when school is not in session).
5. The Zoning Ordinance allows 8 children by right, and up to 12 children with an SUP. As long as the SUP requirement remains an available option within the Zoning Ordinance, this allows residents to file a zoning petition to request for more than 8 children. If the Council believes that more than 8 children is not appropriate within an in-home day care center, then consideration should be given to amending the ordinance to establishing the maximum number at 8.

Staff seeks direction from the Council as to whether amendments should be made to the Zoning Ordinance regarding regulating in-home day care centers. If amendments are desired, staff will initiate a zoning case and begin working with the Planning & Zoning Commission.

Please let me know if you have questions or need additional information.

xc: Phyllis Jarrell, Director of Planning