



AGENDA ITEM#: 7

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## MEMORANDUM

TO: Metropolitan Planning Commission

FROM: Mark Donaldson, Executive Director

DATE: August 14, 2014

SUBJECT: Consideration of amendments to the City of Knoxville zoning ordinance regarding child day care services – 4-A-14-OA

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### REQUEST

MPC staff requests that the planning commission consider and initiate amendments to the City of Knoxville zoning ordinance regarding small child day care services as accessory uses to houses with suitable development standards.

### BACKGROUND

A recent decision by the City of Knoxville required the operator of a small in-home day care service to apply to the MPC for consideration of her day care operation as a home occupation under the regulations of the Knoxville zoning ordinance. This decision broke a decades-long policy that day care providers with fewer than six children in their care were not subject to regulations of the zoning ordinance. It is estimated there may be hundreds of these small day care providers operating throughout the neighborhoods of the city.

At its January 9<sup>th</sup> 2014 meeting MPC approved an application to provide day care for up to four children in the applicant's house in a neighborhood zoned EN-1. Neighbors appealed the MPC decision to City Council. City Council in February overturned the MPC decision and denied the application.

### ANALYSIS

Staff believes small in-home day care service providers are good for children, good for families, good for neighborhoods and, ultimately, good for the city as a whole. To this end the City's zoning ordinance should explicitly allow small day care service providers by right.

The city's zoning ordinance is currently inconsistent with state law and with zoning codes for the other governments in Knox County, for the other three major metropolitan areas in Tennessee and for other comparable cities in the southeastern U.S.

The City of Knoxville currently defines day care center, private day nursery and kindergartens with a single definition:

*An agency, organization, or individual providing care for six or more children, not related by blood, marriage to, or not legal wards or foster children of the attendant adult.*

The state of Tennessee requires licensing in accordance with state regulations for any day care agency with five or more children in its care. Defined agencies include family child care homes (5 to 7 children), group child care homes (8 to 12 children) and child care centers (13 or more children).

The Knox County zoning ordinance permits family child care homes and group child care homes operated by residents in their home as a permitted use (by right) in all of its residential zone districts and the Town of Farragut permits (by right) day care and babysitting for a fee for up to four children by residents in their home in all of its residential zone districts.

Chattanooga, Nashville and Memphis all permit (by right) the provision of day care by a resident in their home in all residential zone districts. This pattern holds as well in other nearby cities such as Lexington, KY, Raleigh, NC and Charlotte, NC.

### **PROPOSED AMENDMENTS**

Address the current definition. The definition of *private day nursery/day care center/kindergarten* in the City's zoning ordinance should be amended to establish a threshold of five (5) or more children within the definition to make it consistent with state law regarding the licensing of child day care agencies and to use the definition of children from TCA 71-3-501.

Establish a right for small day care services. The City's zoning ordinance should explicitly address the providing of child day care services for four or fewer children as a right within a house. This can be done by adding a definition for "*child day care services*" and allowing this service as an accessory use to a house within Article V, Section 4 (Accessory uses, buildings and structures) of the zoning ordinance.

Establish standards for small day care services. Minimal standards that will not create a barrier to service providers should be adopted to address potential concerns with neighborhood compatibility.

### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission recommend to City Council approval of the proposed amendments to the zoning ordinance as shown in Amendment A and Amendment B.

### **EXHIBITS**

- Exhibit A – Current City of Knoxville approach
- Exhibit B – Summary of other day care approaches
- Amendment A – Proposed amendment to current definition of private day nursery and new definition for small day care service
- Amendment B – Proposed standards for day care service as an accessory use to a house

Day Care Facilities  
Current City of Knoxville Approach

**DEFINITIONS**

*Day care center* - See “Day Nursery, Private.”

*Day nursery, private* - An agency, organization, or individual providing care for six or more children, not related by blood, marriage to, or not legal wards or foster children of the attendant adult.

*Kindergartens* - See “Day Nurseries, Private.”

From the Cumberland Form Code Section.

Day Care - A facility providing care, protection, and supervision of 6 more unrelated children or adults on a regular basis.

**PERMITTED USES:**

| Zone   | Type of Use | Listing                                                                                                                                                                                                                                                                      |
|--------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R-1    | UR          | 12. Private day nurseries and kindergartens as regulated in article V, section 3.                                                                                                                                                                                            |
| R-1A   | UR          | 6. Private day nurseries and kindergartens as regulated in article V, section 3.                                                                                                                                                                                             |
| EN-1&2 | UR          | Private day nurseries and kindergartens as regulated in article V, section 3.                                                                                                                                                                                                |
| R-2    | UR          | 7. Private day nurseries and kindergartens as regulated in article V, section 3.                                                                                                                                                                                             |
| O-1    | UR          | By reference to R-2 uses permitted on review                                                                                                                                                                                                                                 |
| C-2    | P           | 23. Private day nurseries and kindergartens, subject to conditions                                                                                                                                                                                                           |
| C-3    | UR          | 2. Private day nurseries and kindergartens, including day care centers, as regulated in article V, section 3.                                                                                                                                                                |
| C-4    | UR          | 4. Private day nurseries and kindergartens, including day care centers, as regulated in article V, section 3.                                                                                                                                                                |
| C-6    | UR          | 2. Private day nurseries and kindergartens as regulated in article V, section 3.                                                                                                                                                                                             |
| RP-123 | UR          | 4. Community facilities: Community facilities such as libraries, museums, churches and other religious institutions, private day nurseries, and kindergartens as regulated in article V, section 3, and nonprofit clubs such as country clubs, swimming and/or tennis clubs. |
| PC-1&2 | P           | 15. Private day nurseries and kindergartens as regulated in article V.                                                                                                                                                                                                       |
| TC-1   | UR          | 1. Private day nurseries and kindergartens, subject to conditions                                                                                                                                                                                                            |

P = Permitted Use      UR = Use Permitted on Review

**DEVELOPMENT STANDARDS**

As permitted by right in the C-2 district:

Private day nurseries and kindergartens, subject to:

- a. Total building area shall equal seventy (70) square feet of usable play area per child. At least thirty-five (35) square feet of this area per child shall be designated for large motor skill activities.
- b. There shall be a minimum of fifty (50) square feet of usable outdoor play area for each child on the playground at one time (maximum number of children to be permitted on the playground at one time to be established by the Tennessee Department of Human Services at the time of licensing).
- c. The outdoor play area shall be fenced to a minimum height of four (4) feet.
- d. The fenced play area shall be thirty-five (35) feet from any public street. Where the thirty-five (35) foot setback cannot be met, the applicant may have the option of installing a vehicle barrier that will meet the objectives of separation and safety. The barrier alternative shall be subject to approval by the department of engineering.
- e. Asphalt, concrete, and other non-resilient surfaces shall be prohibited under and around outdoor play equipment where children could possibly fall more than one (1) foot. This includes:
  1. At least two (2) feet around any climbing apparatus.
  2. At least four (4) feet beyond the end of any slide.
  3. At least two (2) feet beyond the end of the arc of any swing.

## Day Care Facilities Current City of Knoxville Approach

### As permitted on review in the TC-1 district:

Private day nurseries and kindergartens, subject to the following standards:

- a. Total building area shall equal seventy (70) square feet of usable play area per child. At least thirty-five (35) square feet of this area per child shall be designated for large motor skill activities.
- b. There shall be a minimum of fifty (50) square feet of usable outdoor play area for each child on the playground at one (1) time (maximum number of children to be permitted on the playground at one (1) time to be established by the state department of human services at the time of licensing).
- c. The outdoor play area shall be fenced to a minimum height of four (4) feet.
- d. The fenced play area shall be thirty-five (35) feet from any public street. Where the thirty-five (35) foot setback cannot be met, the applicant may have the option of installing a vehicle barrier that will meet the objectives of separation and safety. The barrier alternative shall be subject to approval by the department of engineering.
- e. Asphalt, concrete, and other non-resilient surfaces shall be prohibited under and around outdoor play equipment where children could possibly fall more than one (1) foot. This includes:
  - (1) At least two (2) feet around any climbing apparatus.
  - (2) At least four (4) feet beyond the end of any slide.
  - (3) At least two (2) feet beyond the end of the arc of any swing.

As an alternative to a and b above, the following minimum requirements may be used:

- a. The total lot area shall not be less than ten thousand (10,000) square feet.
- b. The building must provide thirty (30) square feet per child of usable indoor play space, not including halls, kitchen, or office space.
- c. A fenced play area of not less than two thousand five hundred (2,500) square feet for the first twenty (20) children shall be provided. For every additional child, an additional one hundred (100) square feet shall be provided.

### Article V, Section 3(F)

#### 4. *Private Day Nurseries and Kindergartens:*

- a. Total lot area shall be not less than fifteen thousand (15,000) square feet.
- b. Total building area shall equal thirty-five (35) square feet per child, with not less than seventy-five (75) percent of this area provided in the primary care area of the building.
- c. A fenced play area of not less than four thousand (4,000) square feet shall be provided for the first twenty (20) or less children, with one hundred (100) additional square feet for each additional child. No portion of the fenced play area shall be located closer than thirty-five (35) feet to any public street.
- d. The Planning Commission shall use the above requirements and other information about the site, including the functional street classification accessing the site, and surrounding residential development to deny or approve the request. Any approval shall state the maximum number of children to be kept at the facility.
- e. Off-street parking [shall be] as regulated in Article 5, Section 7.
- f. In addition to the above requirements, the facilities, operation and maintenance shall meet the requirements of the State Department of Human Services.

### **PARKING (Article V, Section 7)**

Kindergartens, day schools, and the equivalent private or parochial schools.

Two (2) parking spaces per three (3) teachers and employees normally engaged in or about the building or grounds, plus one (1) off-street loading space per eight (8) pupils.

### **Use of Term: Day Care Center**

The term day care center is used in the separation regulations for halfway houses and methadone treatment centers.

## Day Care Summary of Tennessee and Other Approaches

### State of Tennessee

- TCA 71-3-501
- Defines "Child care" to mean the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day and "Child care agency" or "agency" means a place or facility, regardless of whether it is currently licensed, that is operated as a family child care home, a group child care home, a child care center, or a drop-in center, as those terms are defined in this part, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day;
- Requires state license for any child care agency with 5 or more children
- Defines:
  - Family child care home (5 to 7 children, 3 or more hours per day)
  - Group child care home (8 to 12 children, 3 or more hours per day)
  - Child care center (13 or more children, 3 or more hours per day)
  - Children as "persons under eighteen (18) years of age"

### Nashville

- Defines "day care" to mean the provision of care for individuals, who are not related to the primary caregiver, for less than 24 hours per day.
- Allows day care for up to 4 individuals as an accessory use to a house
- Allows "day care home" for 5 to 12 individuals and parents day out centers as special exception use in all residential districts. BZA approval required, subject to standards.
- Allows larger day care centers and school day care centers

### Memphis

- Defines "day care" to mean the providing of care, protection, and supervision of children or adults on a regular basis away from their primary residence. Care is typically provided to a given individual for fewer than 18 hours each day, although the facility may be open 24 hours each day.
- Uses classification of definitions comparable to State of TN
- Permits "family day care home" (up to 7 persons) by right in all residential zone districts

### Chattanooga

- Defines "day care home" (up to 7 children or adults for less than 24 hours per day) and "day care center" (8 or more)
- Allows day care home as a permitted use by right in all residential zone districts.

### Knox County

- Defines "day care home" (5 to 7 children), "group day care home" (8 to 12 children), and "child day care center" (13 or more children) comparable to the State of Tennessee
- Also defines adult day care facility for 3 or more persons
- Allows as a permitted use by right day care home and group day care home (if the resident is the caregiver) in all residential zone districts

## Day Care Summary of Tennessee and Other Approaches

### Farragut

- Defines day care facilities as family day care home (5 to 7 children), group day care home (8 to 12 children) and day care center (13 or more children) similar to State of Tennessee
- Defines babysitting as care of up to 4 children for a charge
- Home day care and babysitting are allowed as home occupations
- Home occupations are permitted by right in all residential zone districts, subject to not exceeding 4 children or adult clients for less than 18 hours per day

### Franklin

- Defines "day care center" as a facility designed to provide care and instruction for children or adults
- Small day care center allowed as a home occupation
- Home occupations are allowed as permitted uses by right in all residential districts

### Lexington, KY

- Family child care is defined as "an incidental and subordinate use within a dwelling and not an accessory structure, where full or part time care is provided by a resident of the dwelling, for a fee, to children, as regulated by the Commonwealth.
- Family child care is considered accessory to a house, provided the total number of children does not exceed 6
- Family child care with 7 to 12 children is a conditional use, subject to requirements and permit.

### Charlotte, NC

- Family childcare homes for 8 or fewer children may be established as an accessory use to a house in all residential districts. Requires permit from City and is subject to requirements.
- Childcare centers in a residence, for 12 or fewer children may be established as an accessory use to a house in all residential districts. Requires a permit from City and is subject to requirements.

### Raleigh, NC

- "Day care home" is defined as a day care for a maximum of 8 persons in the residence of the provider.
- Day care homes are allowed as a permitted use by right in all residential districts and most other districts, subject to standards.
- "Day care center" is defined as a day care for more than 8 persons where staffing complies with state and local regulations. May include nursery school and preschool.
- Day care centers are allowed in all residential district, subject to special use permit. Allowed by right in other districts, subject to standards.

## DEFINITIONS

Current Definitions: **New language bold and underlined**

*Day care center* - See "Day Nursery, Private."

*Day nursery, private* - An agency, organization, or individual providing care for six **five (5)** or more children **persons under the age of eighteen (18)** not related by blood, marriage to, or not legal wards or foster children of the attendant adult.

*Kindergartens* - See "Day Nurseries, Private."

Proposed Definitions:

**Child day care service** - **The provision, for a fee, of care and/or instruction for four (4) or fewer persons under the age of eighteen (18) who are not related to the primary caregiver, for less than eighteen (18) hours per day. A child day care service shall be considered accessory to a house and not subject to review as a home occupation.**

# STANDARDS

Proposed Amendment: New language bold and underlined

Article V, SECTION 4  
ACCESSORY USES, BUILDINGS, AND STRUCTURES

This is a new section:

**Aa. Permitted accessory uses. In addition to the general provisions of section (A) above, this section shall regulate uses customarily incidental to any principal use of land, buildings, and other structures.**

**1. For houses:**

**a. Child day care service, subject to the following standards:**

- i. The house shall be the primary residence of the primary care giver.**
- ii. No person, other than members of the family residing on the premises, shall be engaged or employed in the provision of care, except that a short-term substitute non-resident person providing care on the premises shall be allowed while the resident caregiver is sick or otherwise unable to provide care.**
- iii. The use of any accessory building or accessory structure, other than children's playhouses and playground equipment, for child day care service is prohibited.**
- iv. Any outdoor play equipment stored outside throughout the day and night shall be located in the rear yard of the house and shall meet the requirements for the minimum required yard for a principal building.**
- v. Outdoor play is prohibited from sundown to sunrise.**
- vi. A sign for the child day care service is prohibited.**