

TO: CHAIR AND MEMBERS
PLANNING AND DEVELOPMENT COMMITTEE

DATE: 2016 April 19

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 42000 20
Reference: Bylaw Text Amendment

**SUBJECT: PROPOSED ZONING BYLAW TEXT AMENDMENT
HOME-BASED CHILD CARE FACILITIES**

PURPOSE: To propose text amendments to the Burnaby Zoning Bylaw regarding home-based child care facilities.

RECOMMENDATIONS:

1. **THAT** Council be requested to authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw, as outlined in Section 3.0 of this report, for advancement to a Public Hearing at a future date.
2. **THAT** a copy of this report be sent to the Fraser Health Authority at 4946 Canada Way, Burnaby, B.C. V5G 4H7.

REPORT**1.0 INTRODUCTION**

The vision statement of Burnaby's Child Care Policy, adopted in 1994 and revised in 2000 states that the City of Burnaby is committed to:

- assisting with the creation of a comprehensive and inclusive child care system in Burnaby;
- supporting families and children in their search for child care options; and
- working with the School Board, government ministries, child care providers, community service providers, and others in pursuing the City's child care objectives.

Further, the policy states that the City will work to improve the availability, accessibility, and affordability of child care by "providing appropriate and sufficient opportunities for the establishment of child care facilities within the context of the Official Community Plan, community plans, Burnaby Zoning Bylaw, and other City regulations". These policy statements are also identified as key objectives in the City's Social Sustainability Strategy which was adopted by Council in 2011. These policies recognize that while the provision and regulation of child care is the responsibility of the Provincial government, the City can play a supportive role.

The City has undertaken significant efforts to improve child care options in Burnaby through zoning and other planning efforts; establishment of the Burnaby Child Care Resources Group, comprised of City staff and representatives of non-profit child care societies, the YMCA, and the Burnaby School District; direct advocacy to senior levels of government; and support for child care centres. This report seeks to further clarify references to child care within the Zoning Bylaw, in order to provide clear direction to individuals and groups seeking to establish child care centres in Burnaby.

2.0 BACKGROUND

Since 1989, the Burnaby Zoning Bylaw has permitted child care facilities with a maximum of 10 children in residential settings. The maximum number of children was determined in accordance with Provincial regulations for home-based child care facilities and the accepted interpretation of the *BC Building Code* (BCBC) assembly occupancy threshold for daycares at that time. Since then, Provincial regulations have been updated; as a result, only home-based child care facilities with eight or fewer children are exempt from assembly occupancy requirements.

The proposed text amendments, which reduce the maximum permitted number of children in home-based child care facilities to eight, are intended to bring the Burnaby Zoning Bylaw into alignment with this updated regulatory framework. In addition, this review provides an opportunity to update Zoning Bylaw terms and definitions for child care uses, and remove provisions that are rendered inconsistent or redundant by the proposed changes.

The proposed amendments have been reviewed with the Burnaby Child Care Resources Group, which serves as an advisory body on child care policies, services and programs to the Social Planning Committee. This group acknowledges the need for the amendments to comply with the current Provincial regulatory framework.

3.0 HOME BASED CHILD CARE IN BURNABY

Child care centres operating within residential dwellings contribute to the limited supply of licensed child care spaces available in Burnaby, and provide child care options for working parents who often struggle to find child care that meets their needs. As of 2015 August, there were approximately 4,820 licensed child care spaces in 245 child care centres in Burnaby. Of these spaces, 15% were in residential zoning districts, representing 140 out of 245 child care centres. Child care spaces in residential dwellings are an important contribution to the range of child care available in Burnaby, as they expand the options available to parents, including spaces that may be closer to home. It is noted, in relation to the subject text amendment, that only nine home-based child care centres had more than eight children, representing 18 additional spaces in homes that currently accommodate 10 children.

3.0 PROPOSED ZONING BYLAW TEXT AMENDMENTS

3.1 Definitions

Issue

The term “family child care centre” does not clearly distinguish home-based child care facilities from other child care facilities. In addition, the definitions of “child care facility” and “family child care centre” reference Provincial licensing terms that may not reflect current usage.

Discussion

Section 3 of the Zoning Bylaw includes the following definitions:

“CHILD CARE FACILITY” means any community care facility for children licensed under the Community Care Facility Act other than a facility for residential care for children.

“FAMILY CHILD CARE CENTRE” means an in-home child care operation licensed under the Community Care Facility Act to provide family child care.

These definitions include terms such as “community care facility,” “residential care for children,” and “family child care” that are not elsewhere defined in the Zoning Bylaw, and that reference Provincial terms that have changed, and may continue to change, over time. For instance, the term “family child care centre” reflects only one type of home-based child care facility licensed under Provincial legislation, and does not readily convey that such facilities are located only in home-based settings. The distinction between child care facilities that are located in residential dwelling units and those that are located outside of homes in institutional or mixed use settings is central to the regulation of such facilities under the Zoning Bylaw and should be clearly made.

In addition, the Provincial *Community Care Facility Act* referenced in the definitions was repealed in 2004, and replaced with the *Community Care and Assisted Living Act* (CCALA); the above definitions should be amended to reflect this change.

For these reasons, it is recommended that:

- the definition of “family child care centre” be amended to remove references to “family child care” and that the term itself be changed to “home-based child care facility” in the definition and wherever else it appears in the bylaw;
- the definition of “child care facility” be amended to remove references to “community care facility” and “residential care for children” and to add language to distinguish “child care facilities” from both institutional homes for children and home-based child care facilities; and

- the term “Community Care Facility Act” be replaced by reference to the *Community Care and Assisted Living Act* (CCALA).

It is noted that the above definitions do not include “licence-not-required” (LNR) child care services, which provide care for up to two children (or a sibling group) in a home-based setting and are subject only to voluntary registration with Provincial health authorities.

Recommended Bylaw Amendments

1. **THAT** the definition of “family child care centre” be replaced by a definition of “home-based child care facility” that specifies that such facilities are operated as a home occupation and licensed under the *Community Care and Assisted Living Act* and are distinct from residential homes for children.
2. **THAT** the definition of “child care facility” be updated to reflect current Provincial legislation and distinguish the use from both residential homes for children and home-based child care facilities.
3. **THAT** the term “home-based child care facility” replace “family child care centre” wherever it appears in the Zoning Bylaw.

3.2 Permitted number of children in home-based settings

Issue

The Zoning Bylaw definition of “home occupation” permits the operation of a child care facility for up to 10 children in a single family dwelling. However, a maximum of eight children would be more consistent with the provisions of the CCALA.

Discussion

Section 3 of the Zoning Bylaw provides the following definition:

“HOME OCCUPATION” means an occupation or profession that is incidental to the use of a dwelling unit for residential purposes, or to the residential use of a lot occupied by a dwelling and includes [...]

(c) the operation of a family child care centre,

(d) the operation of a child care facility for not more than 10 children in a single family dwelling where care is provided by persons resident in the dwelling and not more than one non-resident employee. The maximum of 10 children includes any preschool children of the resident.

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This definition was adopted by Council at its meeting of 2012 March 05 in an effort to simplify the approval process for larger home-based child care facilities, which previously required rezoning to the R “b” subcategory. The 10-child limit was established in 1989, in accordance with Provincial regulations for home-based child care facilities and the accepted interpretation of the *BC Building Code* (BCBC) assembly occupancy threshold for daycares at that time.

Since then, the enactment of the CCALA has effectively lowered the assembly occupancy threshold for home-based child care facilities from 10 to 8. Unlike its predecessor, the *Community Care Facility Act*, the CCALA specifies that the only facilities that are exempt from BCBC regulations, beyond those that apply to single family dwellings, are facilities with eight children or fewer.

It is therefore proposed that the Zoning Bylaw provisions permitting home-based care for up to 10 children be deleted. Home-based child care facilities that accommodate no more than eight children, and are subject only to the standard BCBC requirements that apply to single family dwellings, would continue to be permitted as home occupations. In addition, child care facilities that provide care for more than eight children would continue to be permitted outside of home-based settings, under the “child care facility” use category. It is noted that, if the proposed amendment were adopted, the nine existing home-based child care facilities with up to ten child care spaces could continue to operate as legal non-conforming uses under the provisions of Section 911 of the *Local Government Act*, and would retain their existing licences under Provincial regulations.

Recommended Bylaw Amendment

1. **THAT** Subsection (d) of the Section 3 definition of “home occupation,” which includes child care facilities for up to 10 children in a single family dwelling, be deleted.

3.3 Permitted number of child care employees in home-based settings

Issue

The provisions of Section 6.8 of the Zoning Bylaw, which regulate home occupations, permit non-resident employees only in a child care facility, but not in a family child care centre.

Discussion

Regarding home occupations, Section 6.8(7) of the Zoning Bylaw currently states:

No person who is not a resident in the dwelling shall be employed in such an occupation, except in a child care facility.

As discussed above, it is recommended that the definition of a home occupation be amended to delete child care facilities, but retain family child care centres (or “home-based child care

facilities,” as proposed). Home-based child care facilities can accommodate up to eight children, including toddlers and infants, and may therefore require more than one staff person to provide adequate care. It is therefore recommended that the above provision be amended to apply to home-based child care facilities.

Recommended Bylaw Amendment

1. THAT Section 6.8(7) of the Zoning Bylaw be amended similar to the following

No person who is not a resident in the dwelling shall be employed in such as occupation, except for home-based child care facilities which may have one non-resident employee.

3.4 Permitted child care uses in RM Districts

Issue

Family child care centres (home-based child care facilities) are included as a distinct use in many RM Districts. Family child care centres are also included in the definition of a home occupation, which is also a permitted use in many RM Districts. This creates confusion, and in some cases inconsistency, regarding the permitting of family child care centres in RM Districts. In addition, “Child care facilities that are not located in a dwelling unit,” are also listed as a distinct permitted use in many RM Districts, further adding to the confusion.

Discussion

The proposed deletion of the term “child care facility” from the definition of a home occupation provides an opportunity to clarify the child care related uses permitted in the RM Districts, and remove inconsistencies and redundancies in the terms used to describe them.

Currently, the RM Districts distinguish between family child care centres (home-based child care facilities) and “child care facilities that are not located in a dwelling unit.” With the elimination of child care facilities from the definition of a home occupation, the latter use category can be simplified to “child care facility.” Family child care centres, which are incorporated into the home occupation use category, no longer need to be referenced as a separate use category.

Section 6.8A(1) of the Zoning Bylaw stipulates that in multi-family developments, a family child care centre is only permitted on the ground floor, provided that the property owners or strata council support the proposal.

Section 6.8A(2) states:

In RM and P11 Districts no child care facility other than a family child care centre shall be located in a dwelling unit.

With the proposed deletion of child care facilities from the definition of a home occupation, and the proposed deletion of “family child care centre” as a distinct permitted use in the RM Districts, this provision is redundant and can also be deleted. It is noted that while home occupations are a permitted use in the P11 District, no other reference to family child care centres is found in the P11 District schedule and therefore no amendments to this schedule are proposed.

Table 1 below outlines the proposed use categories and the RM Districts in which they are permitted. These use categories represent changes in terminology but do not vary the type of child care uses currently permitted in each district.

Table 1
Permitted child care uses in RM Districts

	Home-Based Child Care	Child Care Facilities
Use Categories - Current	Family child care centre or Home occupation (varies)	Child care facilities that are not located in a dwelling unit
Use Categories - Proposed	Home occupation	Child care facilities
Permitted Districts	RM1, RM2, RM3, RM4, RM5, RM6, and RM7	RM1, RM2, RM3, RM3s, RM4, RM4s, RM5, and RM5s

It is noted that the application of Section 20 of the CCALA to home-based child care facilities in multiple-family dwellings is under review by the BC Ministry of Children and Family Development. BCBC upgrading requirements for home-based child care facilities in multiple family dwellings would be determined at the time of application.

Recommended Bylaw Amendments

1. **THAT** all references to “child care facilities not located in a dwelling unit” be replaced by the term “child care facilities.”
2. **THAT** “family child care centres” be deleted as a permitted use in the RM1, RM2, and RM3 Districts, as they are already permitted as a home occupation.
3. **THAT** Section 205.1A (Uses Permitted in an RM5s Zoning District) be amended to delete the phrase “and family child care centres” as they are already excluded as “uses permitted in the R6 District.”
4. **THAT** Section 6.8A(2), which states that in RM and P11 Districts, no child care facility other than a family child care centre shall be located in a dwelling unit, be deleted.

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From: *Director Planning and Building*
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4.0 CONCLUSION

The above text amendments are proposed in order to bring the Burnaby Zoning Bylaw into alignment with updated Provincial regulations regarding child care facilities, and to provide clarity of language for the child care uses that are currently permitted. The proposed amendments do not change or impact the current range of child care uses permitted in residential zones.

It is recommended that Council be requested to authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw, as outlined in Section 3.0 of this report, for advancement to a Public Hearing at a future date. It is also recommended that a copy of this report be sent to the Fraser Health Authority for information.


Jean Pelletier, Director
PLANNING AND BUILDING

LF/RM:sa

cc: City Manager
Chief Building Inspector
Chief Licence Inspector
City Solicitor
City Clerk