

Adopted January 2008 by
National Association for Family Child Care



Zoning and Restrictive Covenants Prohibiting Family Child Care

The Issue: Family child care providers who are in compliance with their state licensing regulations are being confronted with barriers created by local zoning laws and homeowners associations' restrictive covenants. These restrictions and prohibitions force family child care providers to go out of business or move to communities without restrictions, severely limiting the supply of regulated child care. Policy makers need to recognize family child care as an essential component of the early care and education infrastructure and must plan to include child care in communities where it will be accessible to parents.

What is family child care?

Family child care is an early care and education service provided for a fee in a child care provider's home to children unrelated to the provider. States typically regulate family child care to protect the health and safety of the children in care. Each state makes policy decisions about how it will regulate family child care and what a family child care provider must do in order to receive the state's permission to operate a family child care home.

The number of family child care homes in this country, and the number of children they serve, indicates that family child care is an essential component of our early care and education infrastructure. At the time of the National Association for Regulatory Administration (NARA) 2005 Child Care Licensing Study¹, there were 213,966 licensed family child care homes in the United States with the capacity to care for 1,921,639 children. Only ten states, however, require family child care providers to be licensed when they care for one unrelated child. The rest do not regulate family child care homes until the number of children served reaches the state's threshold for licensing, so the actual number of legally operating family child care homes is much higher than the number cited in the licensing study.

Although family child care is a service provided for a fee and regulated by the state, it is by definition a business that cannot exist outside of a residential setting. Family child care can only be provided in a home environment, offering a small group of children responsive, nurturing care with all the comforts of learning basic early childhood skills in a setting as similar to their own homes as possible. Because the number of children is small and their ages range from infant to school age, a family child care home allows siblings to stay together. Because children can stay in the same provider's care from infancy through elementary school, they can develop long-term relationships with their family child care provider and the other children in the provider's care. Family child care resembles the care a stay-at-home mother provides for her family, and a

¹ National Association for Regulatory Administration and National Child Care Information and Technical Assistance Center. *The 2005 Child Care Licensing Study: Final Report*. December, 2006. Accessed at <http://www.nara.affiniscape.com/displaycommon.cfm?an=1&subarticlenbr=104> on September 18, 2007.

family child care home is first and foremost a family residence, with all the comforts of home, even when it is offering early care and education services to other children in the neighborhood.

Family child care is also an important community asset. Both families and employers depend on child care to enable parents to go to work. Widely recognized brain development research has demonstrated that young children benefit from high quality early learning experiences in the first five years of their lives. In many rural areas, family child care homes are the only early care and education facilities available. In more heavily populated areas, family child care homes offer parents the choice of a setting where their children can learn in their home language or spend their child care hours with their siblings. Whatever their reasons, many parents want their children to receive their early education in a family child care home. Family child care not only educates young children, it also gives parents the support they need to be dependable, productive employees. Local policy makers must recognize this benefit to the community and support family child care that is operated in compliance with state regulations. Unfortunately, the trend in recent years shows the number of regulated family child care homes in the country is declining. One of the reasons for that decline may be found in local land use policy decisions.

What impact do zoning and restrictive covenants have on family child care?

Local governments enact zoning laws that keep most business activities out of residential neighborhoods, and they can set restrictions and charge fees for permits for the businesses they allow. Developers of residential communities can include restrictive covenants in deeds and homeowners' association covenants that prohibit or limit business activity in homes in the community. Both zoning laws and restrictive covenants, which are also sometimes called deed restrictions, are used to prohibit or restrict the operation of family child care homes that meet state licensing requirements.

Local planning and zoning officials and real estate developers often seem to be unaware of the difference between a large child care center, in a commercial space used only for the child care business, with dozens of children and staff coming and going all day, and a small family child care home, with much less visibility as a single provider cares for six or eight children who eat their meals in the home's kitchen and play in its family room and back yard. Because family child care homes look just like other homes on the block, local policy leaders who have no previous contact with family child care may assume that all child care facilities are like the centers whose signs and parking lots and playgrounds they see as they pass by. But a family child care home is a home first and foremost.

Contrary to the arguments made by those who want to erect barriers to family child care, it is not a business that will negatively impact the quality of life in a community. The problems planners and developers imagine arising include increased traffic and parking problems, excessive noise, commercial signs, and additional liability for personal injuries on playgrounds and other common areas in residential developments. These fears are unfounded and not based on actual experiences with regulated family child care homes. A family child care home may bring a few extra cars into the neighborhood at the beginning and end of the day, although often these cars belong to families who already live in the neighborhood. Children usually arrive and leave on staggered schedules, so demands for parking are both short term and sequential. Family child care homes can be expected to comply with residential standards for noise and signs, and

family child care providers' licensing regulations hold them to higher standards for supervision of children than parents when their children play on local playground facilities, so the risk of injuries will be lower for children in family child care.

States enact child care licensing laws to implement policy decisions they make regarding how child care should be regulated. When family child care providers comply with state licensing laws, they are granted permission by the state to legally operate their family child care homes. But local planning and zoning boards and private real estate developers can disregard the state's policy decisions and restrict, impose fees on or even prohibit family child care in their communities. When local policy makers pass a zoning law that reduces the number of children permitted in family child care homes below the state's legal capacity and charge providers exorbitant permit fees, they make family child care homes less viable economically. These restrictions also make it harder for parents to find care for their children. When real estate developers use restrictive covenants to prohibit family child care in new developments, family child care providers who relocate are forced to give up their profession if they want to purchase a home in a development with restrictive covenants, and families moving into developments with restrictive covenants cannot find child care in their neighborhoods.

NAFCC's position on family child care zoning and restrictive covenants

Family child care is an asset to a community and an essential component of the early care and education delivery system. It offers a safe place for millions of children to play and learn in a home environment every day while their parents work. It also offers many family child care providers a way to work at home while caring for their own young children. When states set the requirements for family child care homes, those requirements should take precedence over zoning and restrictive covenants, so all providers throughout the state operate under the same set of regulations. A family child care provider should not be limited in where in a state she can live and work by restrictive covenants and prohibitive zoning laws; no local jurisdiction should be allowed to charge family child care providers zoning permit fees that make it more costly to operate family child care homes in some parts of the state than in others; and families should be able to find family child care homes in their neighborhoods, wherever they live.

It is the position of NAFCC that family child care must be protected by state law as a residential use. States should enact both preemptive zoning legislation and legislation declaring family child care to be a residential use that shall not be prohibited by restrictive covenants.

This position is consistent with the *Policy Guide on the Provision of Child Care* issued in 1997 by the American Planning Association.²

Most states classify family child care homes as either small family child care homes, which usually have only one provider, or large family child care homes, which require two or more providers depending on the number of children and their ages. A small family child care home operating within the state licensing standards should be classified as a residential use, not subject to any further restrictions by local ordinances or restrictive covenants because the family

² American Planning Association, *Policy Guide on the Provision of Child Care*, 1997, accessed at <http://www.planning.org/policyguides/childcare.htm> on October 18, 2007.

child care use is so similar to the residential use of the other homes in the neighborhood. A large family child care home should also be considered a residential use, but because it has a larger number of client families and one or more employees, some reasonable local restrictions to maintain traffic safety may be imposed. For example, a jurisdiction could use a non-discretionary, no fee permit process to restrict the number of large family child care homes that can operate on one block or could require a provider to create a traffic and parking plan for the family child care home's clients and staff.³

The NAFCC mission is to promote quality child care by strengthening the profession of family child care. Zoning and restrictive covenants that prohibit or place limitations on family child care weaken our profession by driving family child care providers who are willing to comply with state child care licensing out of the field. We urge all local policy makers to examine their land use plan and find ways to protect family child care providers who meet their state child care licensing requirements.

³ See Low Income Investment Fund report, *Responding to Child Care Facilities: A Practical Guide for City and County Planners*, 2007, accessed at [http://www.liifund.org/PROGRAMS-NEW/CHILDCARE/TOOLS/\(3\)%20Responding_to_Child_Care_Facilities.pdf](http://www.liifund.org/PROGRAMS-NEW/CHILDCARE/TOOLS/(3)%20Responding_to_Child_Care_Facilities.pdf) on October 18, 2007.