



# City of Grand Forks Staff Report

**Planning and Zoning Commission – December 7, 2016**

**City Council – December 19, 2016**

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**Agenda Item: 3-2 (Final)** Matter of the request from the Planning and Community Development Department, on behalf of the City of Grand Forks, ND, for final approval of an Ordinance to amend the text of the Land Development Code, Chapter XVIII of the Grand Forks City Code of 1987, as amended, amending sections 18-0204 Rules and Definitions; 18-0214 B-1 Limited Business District; and 18-0215 B-2 Shopping Center District, all relating to Child Day Care services.

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**Submitted by:** Brad Gengler, Planning and Community Development Director

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**Staff Recommended Action: Recommend final approval of the request from the Planning and Community Development Department, on behalf of the City of Grand Forks, ND, for preliminary approval of an Ordinance to amend the text of the Land Development Code, Chapter XVIII of the Grand Forks City Code of 1987, as amended, amending Sections 18-0204 Rules and Definitions; 18-0214 B-1 Limited Business District; and 18-0215 B-2 Shopping Center District, all relating to child day care services. Recommend the City Council give final approval of the attached ordinance on December 19, 2016.**

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**Committee Recommended Action:**

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**Council Action:**

**BACKGROUND:** The purpose of this proposed child day care ordinance amendment is twofold. First, the amendment will help streamline existing code and eliminate several ambiguities relating to the definitions of various forms of child care services, as well as aligning code more closely with State laws. Second, the amendment will provide for an additional type of child care service that is specifically intended for temporary drop-in child care services in commercial zoning districts.

**NOTE:** It should be stressed that the proposed ordinance will not change existing capacities for certain types of child care services conducted in residential areas. This will be discussed further in this report.

For several years staff has struggled with existing elements of the zoning code relating to child day care services. These portions of code have not been updated for many years. Staff has been working with representatives from Northeast Human Services on making the appropriate changes needed in order to create a more accurate and coherent code. Staff recommends the following changes to the definitions of child care services.

**NOTE:** No substantive changes are proposed for the following section. The intent is to replace existing text with language taken directly from NDCC 50-11.1 relating to Early childhood Services.

## **18-0204. - Rules and definitions (2) Definitions**

### **EXISTING**

#### *Child care facilities:*

Substitute parental child care provided pursuant to North Dakota Century Code Chapter 50-11.

Child care provided in a kindergarten which has been established pursuant to North Dakota Century Code Chapter 15-45 or a non-public elementary school program established pursuant to North Dakota Century Code Chapter 15-34.1.

Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.

Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four (4) continuous hours while the child's parent, guardian or custodian is attending church services, shopping or engaged in other activities, other than employment, on or near the premises.

Schools or classes for religious instructions conducted by religious orders during the summer months for not more than two (2) weeks, Sunday schools, weekly catechism or other classes for religious instruction.

Summer resident or day camps for children which serve no preschool age children for more than two (2) weeks.

Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.

Head start programs that are federally funded and meet all federal and state head start standards and requirements.

### **PROPOSED**

Early childhood services: As defined in NDCC 50-11.1-02, means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. Early childhood services do not include:

- a. Substitute parental child care provided pursuant to chapter 50-11.
- b. Child care provided in any educational facility, whether public or private, in grade one or above.

- c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
- d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
- j. Child care provided in a medical facility by medical personnel to children who are ill.

### **EXISTING WITH MINOR CHANGE**

*Child (day) care centers*, other than a private residence, means an early child care facility where early childhood services are provided for more than twelve (12) children.

### **EXISTING**

*Family child care home* means an occupied private residence in which childhood services are provided to no more than seven (7) children at any one (1) time, except that the term includes a residence providing early childhood services to two (2) additional school age children during the two (2) hours immediately before and after the school day and all day, except Saturday and Sunday when school is not in service during the official school year.

### **PROPOSED**

*Family child care home* means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.

## **EXISTING**

*Group child care home* means a child care facility where early childhood services are provided for eight (8) through twelve (12) children or a facility, other than an occupied private residence, which serves fewer than twelve (12) children; except that the term includes a residence or facility providing early childhood services to two (2) additional school-aged children during the two (2) hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.

## **PROPOSED**

*Group child care home* means an occupied private residence where early childhood services are provided for no more than twelve (12) children; except that the term includes a residence licensed to provide early childhood services to two additional school-age children.

## **EXISTING TO BE REMOVED**

*Day care center.* See "child care facility."

*Day care home.* See "family day care home."

*Family child care home.* See "child care facility."

*Group child care home or group child care facility.* A child care facility, other than an occupied private residence, where early childhood services are provided for eight (8) to eighteen (18) children in a facility.

## **PROPOSED**

*Drop-in child care facility* means a facility where early childhood services are provided for thirty (30) or fewer children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families, subject to the following:

- a. Must be licensed to operate a Group Child Care facility as defined in NDCC 50-11.1 and North Dakota Administrative Code 75-03-09-24.
- b. Must be located in a commercially zoned district.
- c. Must be in compliance with all other federal, state, and local laws, rules, and regulations.

**NOTE:** Staff proposes to add "drop-in child care facilities" as defined by the State. Currently "day care centers" can provide this type of service. The new definition will allow services specifically on a drop-in basis, to a maximum of 30 children. Drop-in facilities are only allowed in commercial zoning districts.

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As stated earlier the proposed ordinance does not change certain types of child care services provided in residential zoning districts. More specifically, the State allows up to 30 children in “group child care” homes. Current City code allows up to 12 children. In recent years there have been discussions on increasing the number of 12 to a much higher amount. Keeping in mind child care homes are typically found in single family neighborhoods, allowing up to 30 children is problematic in several ways. First, the amount of traffic generated by a home serving up to 30 children is not conducive with a single family neighborhood. Other areas of concern relate to life safety issues raised by building and fire codes.

A representative from Northeast Human Services will be available for questions at the November Commission meeting. Staff recommends preliminary approval of the proposed changes to code relating to child care services.

**ANALYSIS AND FINDINGS OF FACT:**

- Ordinance amendments require two actions by both the Planning and Zoning Commission and the City Council.
- Staff consulted with representatives from Northeast Human Services in the preparation of the proposed ordinance amendment.

**SUPPORT MATERIALS:**

- Draft ordinance language

## 18-0204. - Rules and definitions.

- (1) *Rules.* Words used in the present tense shall include the plural, and the plural includes the singular; the word "person" includes a corporation as well as an individual. The word "building" includes the word "structure"; the word "lot" includes the word "plat"; and the word "shall" is mandatory and not directory.
- (2) *Definitions.* Certain words and terms are defined as follows:

### *Child care facilities:*

~~Substitute parental child care provided pursuant to North Dakota Century Code Chapter 50-11.~~

~~Child care provided in a kindergarten which has been established pursuant to North Dakota Century Code Chapter 15-45 or a non public elementary school program established pursuant to North Dakota Century Code Chapter 15-34.1.~~

~~Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.~~

~~Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four (4) continuous hours while the child's parent, guardian or custodian is attending church services, shopping or engaged in other activities, other than employment, on or near the premises.~~

~~Schools or classes for religious instructions conducted by religious orders during the summer months for not more than two (2) weeks, Sunday schools, weekly catechism or other classes for religious instruction.~~

~~Summer resident or day camps for children which serve no preschool age children for more than two (2) weeks.~~

~~Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.~~

~~Head start programs that are federally funded and meet all federal and state head start standards and requirements.~~

Early childhood services: As defined in NDCC 50-11.1-02, means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. Early childhood services do not include:

- a. Substitute parental child care provided pursuant to chapter 50-11.
- b. Child care provided in any educational facility, whether public or private, in grade one or above.
- c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
- d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no children under six years of age for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Head start and early head start programs that are federally funded and meet federal head start performance standards.
- j. Child care provided in a medical facility by medical personnel to children who are ill.

Child (day) care centers, other than a private residence, means an early child care facility where early childhood services are provided for more than twelve (12) children.

Drop-in child care facility means a facility where early childhood services are provided for thirty (30) or fewer children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families, subject to the following:

- a. Must be licensed to operate a Group Child Care facility as defined in NDCC 50-11.1 and North Dakota Administrative Code 75-03-09-24.
- b. Must be located in a commercially zoned district.
- c. Must be in compliance with all other federal, state, and local laws, rules, and regulations.

~~**Family child care home** means an occupied private residence in which childhood services are provided to no more than seven (7) children at any one (1) time, except that the term includes a residence providing early childhood services to two (2) additional school-age children during the two (2) hours immediately before and after the school day and all day, except Saturday and Sunday when school is not in service during the official school year.~~

**Family child care home** means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.

~~**Group child care home** means a child care facility where early childhood services are provided for eight (8) through twelve (12) children or a facility, other than an occupied private residence, which serves fewer than twelve (12) children; except that the term includes a residence or facility providing early childhood services to two (2) additional school-aged children during the two (2) hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.~~

**Group child care home** means an occupied private residence where early childhood services are provided for no more than twelve (12) children; except that the term includes a residence licensed to provide early childhood services to two additional school-age children.

~~**Day care center.** See "child care facility."~~

~~**Day care home.** See "family day care home."~~

~~**Family child care home.** See "child care facility."~~

~~**Group child care home or group child care facility.** A child care facility, other than an occupied private residence, where early childhood services are provided for eight (8) to eighteen (18) children in a facility.~~

**18-0212. - R-5 mobile home residence district.**

- (1) *Statement of intent.* This area to be used exclusively for mobile home residence and limited uses incidental thereto.
  
- (2) *Uses permitted:*

(H) **Group child care homes/prechool**, provided that:

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**18-0214. - B-1 limited business district.**

- (1) *Statement of intent.* This district is intended to provide an area where businesses limited to offices or services are permitted, provided that no merchandising or retail sales are conducted on the premises except such as are incidental or accessory to the principal use.
  
- (2) *Uses permitted:*

(K) **Child care center or multiple licensed facility**, subject to special conditions in section 18-0214(11) below.

Family child care home.

**(M) Drop-in child care facility, subject to special conditions in section 18-0214 (11).**

(11) *Special conditions:*

**(C) Drop-in child care facility, subject to the following provisions:**

- 1. Must be licensed to operate a Group Child Care facility as defined in NDCC 50-11.1 and North Dakota Administrative Code 75-03-09-24.**
  
- 2. Must be located in a commercially zoned district.**
  
- 3. Must be in compliance with all other federal, state, and local laws, rules, and regulations.**

**18-0215. - B-2 shopping center district.**

(2) *Uses permitted:*

**(BBBB) Drop-in child care facility, subject to special conditions in section 18-0215 (11).**

(11) *Special conditions:*

**(C) Drop-in child care facility, subject to the following provisions:**

- 1. Must be licensed to operate a Group Child Care facility as defined in NDCC 50-11.1 and North Dakota Administrative Code 75-03-09-24.**
- 2. Must be located in a commercially zoned district.**
- 3. Must be in compliance with all other federal, state, and local laws, rules, and regulations.**