



STAFF REPORT

DATE: September 8, 2022

TO: Mayor Robinson and Members of the City Council

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SUBJECT: Public Hearing on a proposed Land Use Code Amendment (LUCA) to conform provisions related to the maximum number of children and correct outdated references for Family Child Care Homes in the Land Use Code (LUC) in response to recent amendments to Chapter 43.216 RCW and WAC 110-300-0358. File No. 22-116843-AD.

I. BACKGROUND

A. Background and State Legislation

Family Child Care Homes are defined under LUC 20.50.020 as child care services located in family residences that provide regularly scheduled care for 12 or fewer children for periods of less than 24 hours. This existing definition reflects the prior definition of “Family day care provider” in RCW 43.216.010(1)(c), which also sets a strict limit for these facilities to care for no more than 12 children.

In 2021, the Washington State Legislature passed, and the Governor signed, Senate Bill (SB) 5237, which included various provisions related to child care intended to expand early learning opportunities and child care capacity in the state. This bill amended the definition of “Family day care provider” and “family home provider” in RCW 43.216.010(1)(c) and added a new RCW 43.216.692, directing the Department of Children, Youth, and Families (DCYF) to establish a permanent waiver program for qualifying providers to exceed the maximum of 12 children. Pursuant to these amendments, DCYF enacted rules for the waiver program, effective in January 2022, in WAC 110-300-0358, for how providers can apply for waivers and the criteria to be used in determining whether to grant, continue or rescind these waivers. The criteria include the provider’s years of experience and licensing history, the available square footage in the provider’s home, staff-to-children ratios, age group limits, emergency preparedness plan, working toilets, the licensee’s experience, the requested waiver number, and other factors.

B. Proposed LUCA

The Growth Management Act (GMA), specifically RCW 36.70A.450, restricts local jurisdictions' development and zoning regulations for Family Child Care Homes, stating that no county or city may prohibit this use in residential dwellings and can only impose zoning conditions on this use that are no more restrictive than those imposed on other residential dwellings in the same district. The Department of Children, Youth, and Families (DCYF) is the state licensing agency for all childcare and early learning facilities in Washington State, including Family Child Care Homes. With the changes by SB 5237, the current LUC provisions related to the maximum number of children for Family Child Care Homes are inconsistent with Chapter 43.216 RCW and WAC 110-300-0358, and presents administration and enforcement difficulties as to Family Child Care Homes in Bellevue that have been granted waivers for more than 12 children.

The proposed LUCA is to conform the City's provisions to Chapter 43.216 RCW and WAC 110-300-0358 by amending the existing LUC definition for Family Child Care Homes. The LUCA includes a new clause to be inserted into the definition of Family Child Care Homes in LUC 20.50.020, to account for when DCYF grants a license or approval to providers to exceed the maximum of 12 children. Additionally, this LUCA updates the Family Child Care Homes general use requirements in LUC 20.20.170.C to correct outdated references to state agencies and regulations. A strike-draft of the LUCA is provided as Attachment A.

Note that all other requirements applicable to Family Child Care Homes in Bellevue will remain, including building and fire codes, and there is no effect to DCYF licensing requirements or practices from this LUCA.

II. REVIEW PROCESS

The content of this LUCA was introduced and presented to the City Council on September 6, during which a finding of necessity was entered for the Council to retain authority for processing this LUCA. Following their discussion, Council directed staff to schedule a public hearing for the proposed LUCA. The public hearing has been scheduled for September 26. Following the public hearing, the City Council may adopt the proposed LUCA.

III. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The Environmental Coordinator for the City of Bellevue has determined that this LUCA is Categorically Exempt from the Threshold Determination requirements of the State Environmental Policy Act pursuant to the terms of WAC 197-11-800(19).

IV. PUBLIC ENGAGEMENT

Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. A combined notice of the LUCA application and public hearing was published in the Weekly Permit Bulletin on September 8, and in the Seattle Times on September 12. A copy of this staff report was made available in the combined notice in the Weekly Permit Bulletin.

Department of Commerce Notice

Pursuant to the GMA, proposed amendments to the LUC must be sent to the Washington State Department of Commerce for review and comment. The required notice to the Department of Commerce, including a copy of the draft LUCA, were transmitted on August 29 and is available for review in the code amendment file. No comments have been received by Commerce as of the date of this report.

Enhance Public Engagement

In addition to the public engagement requirements of LUC 20.35.415 *et seq* for City Council Legislative Actions under Process IV, staff has provided enhanced public engagement for this LUCA to include an online presence. A webpage was launched for this LUCA to provide opportunity for the public to learn about the LUCA, with sections on public information messages regarding LUCA progression and staff contact information to submit written comments.

Public Comments

As of this writing, no public comments have been received.

V. DECISION CRITERIA

The decision criteria for an application to amend the text of the LUC are in LUC 20.30J.135. Those criteria, and the relationship of these proposed amendment to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The proposed LUCA is consistent with the Comprehensive Plan, which identifies actions to encourage development and expansion of childcare in Bellevue. This LUCA will conform the City's regulations to state laws which intend for new and existing family child care homes to increase their overall capacity for children under their care beyond a previous maximum of 12, thereby providing additional opportunities for parents and providers. The proposed LUCA is also supported by the following Comprehensive Plan policy:

HS-16. Provide leadership and work in partnership with community agencies to encourage and promote the development and expansion of the supply of affordable, accessible, and quality child care which meets the diverse needs of the community in all areas of the city.

B. The amendment enhances the public health, safety or welfare; and

Finding: The LUCA will enhance the public health, safety and welfare by increasing the capacity for childcare services in Bellevue. According to the legislative intent (Section 2) of SB 5237, the COVID-19 pandemic has significantly disrupted the childcare industry, with many providers forced to close and many parents unable to afford the services that remain. As was intended by the state legislature in adopting RCW 43.216.692, an increase in maximum capacity for smaller-scale, home-based providers can provide needed relief for both providers and parents. Further, in granting waivers to allow for more than 12 children within a family child care home, the DCYF requirements ensure that providers have the appropriate level of staffing, experience, and space within the home to provide adequate care.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The LUCA is not contrary to the best interests of citizens and property owners. The public interest is generally identified in the Comprehensive Plan and the development regulations that implement it. As described above, the proposed LUCA will allow for increased childcare capacity in Bellevue, addressing a shortage caused by the COVID-19 pandemic. Further, the City Council has indicated interest to promote expanding access for childcare in Bellevue, which this LUCA will allow.

VI. RECOMMENDATION

Staff has concluded that the Family Child Care Home LUCA, as drafted in Attachment A, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends the LUCA to the City Council for approval.

ATTACHMENT:

A. Proposed LUCA Strike-Draft