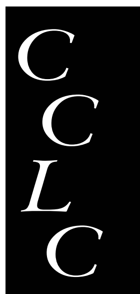

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LEGAL ISSUES FOR FAMILY CHILD CARE PROVIDERS IN CALIFORNIA: HOUSING AND PROPERTY

By the Staff of the Child Care Law Center

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Providing child care in residences offers unique opportunities for quality care in a home environment. At the same time, home-based child care providers need to understand local zoning and land use laws, develop positive relationships with landlords and neighbors, and make their facilities accessible to people with disabilities. This publication discusses the impact of state and local laws that govern property lease restrictions, landlord/tenant law, and fire, building safety, and zoning requirements. It also discusses the laws requiring access for people with disabilities.

Though local governments usually determine what use of property is legal and any restrictions on use, California state law establishes that small family child care homes (serving up to 8 children[1]) do not have to meet any local requirements beyond what the state requires for licensing.[2] City and county governments vary somewhat in their requirements for large family child care homes (serving up to 14 children[3]). Your family child care association or resource and referral agency may be able to answer any questions you have about specific requirements in your community.

MAKING YOUR CHILD CARE BUSINESS WELCOME IN THE NEIGHBORHOOD

Under California law, cities and counties may place reasonable requirements on *large family child care homes* only, although these restrictions can make it difficult to operate a program. However, landlords and neighbors may not forbid family child care programs from operating in residential neighborhoods. Yet, that does not always guarantee that landlords and neighbors will embrace the presence of your child care home with open arms.

While providers and parents know that a well-run family child care home is an asset to a neighborhood, not everyone shares that view. To prevent problems before they arise, it is helpful to talk with your neighbors about your plans for your child care home and to assure them that you will be a good neighbor.[4] After all, you care about your neighborhood too. Many potential problems can be avoided if you and your neighbors talk things over ahead of time and are willing to consider each other's needs.

In talking with your neighbors, be patient and remember that child care is unfamiliar to many people. Many misunderstand and mistrust it. By talking to your neighbors and by operating a good

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[1] Small family child care homes may care for up to eight children, as long as at least one child is in kindergarten and a second child is at least six years old and other licensing conditions are met. Otherwise, small family child care homes may care for only up to six children. CAL. HEALTH & SAFETY CODE § 1597.44 (West 2004). For more information about these licensing regulations and the *plus two* criteria, see *The Family Child Care License* in this Handbook.

[2] CAL. HEALTH & SAFETY CODE § 1597.45 (West 2004).

[3] Large family child care homes may care for up to 14 children, as long as at least one child is in kindergarten and a second child is at least six years old and other licensing criteria are met. Otherwise, large family child care homes may care for only up to 12 children. CAL. HEALTH & SAFETY CODE § 1597.465 (West 2004). For more information about these licensing regulations and the *plus two* criteria, see *The Family Child Care License* in this Handbook.

[4] This is particularly true for large family child care homes in neighborhoods where zoning requires use permits. For more detailed information on use permits, see Section V (Zoning Requirements) below.

family child care home, you can help them learn what child care is really like and why it is good for children, families, and communities.

Neighbors' most frequent concerns likely will be about noise, children playing unsupervised throughout the neighborhood, extra traffic, and the effect of a child care home on their property values. Begin by assuring neighbors that you will respect their needs as much as you can.

- **Noise**. If they worry about noise, you might offer to keep the children indoors in quiet activities during certain hours of the day when quiet is especially important to the neighbors -- such as before 10 a.m. or after 5 p.m.

- **Lack of supervision**. If they worry about children running around the neighborhood, explain that state licensing requires supervision and that a responsible child care home can make it *less likely* that children will run around the neighborhood by providing a place for children of working parents to play after school. Also explain that the children will play in your yard and that when they leave your yard for walks or trips they will always be accompanied by at least one adult.

- **Traffic**. If neighbors worry about extra traffic, explain that the number of new families driving into the neighborhood will not be large and that you will schedule arrivals for different times. You can also offer to ask parents to carpool, park only in certain places (perhaps in your driveway if you have adequate space) and never to double park. Be sure to explain to parents why this is necessary.

- **Property Values.** If neighbors worry about property values, explain that today, for most families with children, a child care facility close to home is an asset to a neighborhood. Explain, too, that your home is primarily that -- the home where you and your family live -- and that its appearance won't change because you also care for children.

And remember to do whatever you have promised your neighbors. If you have promised not to change the appearance of your house, or to spread out the arrival and pick-up times, do so. If circumstances in your child care home change, talk the changes over with neighbors. You want and need their support. If they like your child care home, your life will be much more pleasant. Here, as in many aspects of family child care, a little preventive work can help you avoid some big potential problems down the road.

PROPERTY DEED RESTRICTIONS

WHAT IS A DEED RESTRICTION?

Deeds to residential property may contain restrictions (also known as covenants, conditions, and restrictions; CC&R's; or restrictive covenants) that limit the use of the home in some way. Often, a deed restriction will prohibit the residence from being used to run a business. Neighbors in a subdivision development or condominium complex may use such restrictions to try to stop a family

child care home from operating.

ARE DEED RESTRICTIONS PROHIBITING CHILD CARE LEGAL?

No. California law prohibits deed restrictions that try to stop providers from operating large or small family child care homes; such restrictions are, therefore, void and cannot be enforced.[5] Every restriction or prohibition that limits the use of property as a family child care home, no matter when it was created, is void.[6] This means that in California, a homeowners' association or neighbors in a subdivision cannot use a restrictive covenant as the basis for preventing you from opening a licensed family child care home or from shutting you down once your home is in operation.

RENTAL LEASE RESTRICTIONS

DO I HAVE TO TELL MY LANDLORD THAT I AM OPERATING A FAMILY CHILD CARE PROGRAM?

Yes. The law requires you to inform your landlord that you are operating, or intend to operate, a family child care program. You must provide notice to your landlord, but the landlord's permission is not required. The type of notice required depends on whether you are already operating a family child care program.

- **If you are not already operating a family child care program** (new tenants and those currently residing in a rental home) you must give the landlord **30 days notice** before commencing operation.[7]
- **If you were previously operating and then relocate** to a new dwelling, you may give **less than 30 days notice if** the California Department of Social Services Community Care Licensing Division approves the operation of the new facility in less than 30 days.[8]
- **If you are already operating in a rental home**, you should have already given notice; if you have not, you should give notice **immediately.**[9]

California landlords may not refuse to give a residential tenant permission to operate a family child care program that cares for up to six or twelve children (depending on whether it is a small or large family child care program).[10] The written notice given to the landlord should state that landlords are

[5] CAL. HEALTH & SAFETY CODE § 1597.40(b) and (c) (West 2004).
[6] *Barrett v. Dawson* (App. 4 Dist. 1998) 61 Cal.App.4th 1048.
[7] CAL. HEALTH & SAFETY CODE § 1597.40(d)(1) (West 2004).
[8] CAL. HEALTH & SAFETY CODE § 1597.40(d)(2) (West 2004).
[9] CAL. HEALTH & SAFETY CODE § 1597.40(d)(3) (West 2004).
[10] A landlord does have the right to refuse permission to a tenant to expand capacity under the *plus two* provisions (see CAL. HEALTH & SAFETY CODE § 1597.44 and § 1597.465), if the provider wants to care for two additional school age children. But if a landlord refuses permission to a tenant to care for

not permitted to prohibit family child care.[11] The state law does not prevent a landlord from refusing to rent to someone once the landlord knows that the renter provides child care. While it is illegal for the landlord to evict a tenant, or to place conditions on the tenancy based on the fact that a tenant operates a family child care home, it is not uncommon for these things to occur. An unscrupulous landlord who becomes aware that a tenant intends to operate a family child care program could fabricate some other reason to evict the tenant. It is therefore important for family child care providers in rental homes to be very conscientious about complying with the rest of the terms of the rental agreement because failure to do so could give a landlord a legitimate reason to evict or place restrictions on a tenant.

Because it can be difficult to find a landlord willing to rent to a family child care provider, prospective tenants sometimes withhold information about their plans until the lease is signed or until they move in. That is perfectly legal unless the landlord asks for your source of income, in which case you must reveal it. Providers must give notice and wait 30 days to begin to operate. It may be the only way to find a rental home for some. However, landlords who are hostile to the idea of family child care in a rental unit may become even more hostile if they feel deceived. While withholding the information may help to secure the apartment, it may upset your landlord. Meanwhile, you will also have to live without the income you expected for 30 days or, by beginning operation sooner, give your landlord just the grounds needed to end your tenancy or your child care program.

If you have a liability insurance policy, you may want to offer the landlord the opportunity to be named on the policy, since doing so gives the landlord more protection and thus may serve to ease tensions between the two of you. If a landlord asks to be named on your liability policy, you must agree, as long as doing so would not result in the cancellation or non-renewal of the policy and the landlord covers any additional cost resulting from adding the landlord's name.[12]

WHAT RESTRICTIONS ARE COMMONLY FOUND IN LEASES?

Like deeds to property, many leases for residential property contain restrictions or covenants against operating a business in the home, or just against using the rental home for child care. Landlords also sometimes attempt to require the provider/tenant to carry special types of insurance, such as liability insurance, as a condition of tenancy.

ARE LEASE RESTRICTIONS THAT PROHIBIT FAMILY CHILD CARE LEGAL?

No. Like deed restrictions, lease restrictions that try to prevent providers from operating family child care homes are illegal in California.[13] Landlords may not prohibit tenants from using their apartment or leased home for family child care. Landlords also may not impose any restrictions or conditions

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eight (small) or 14 children (large family child care home), that provider still has the right to care for six or 12 children (depending on the license), regardless of the landlord's wishes. Doing so requires only a *notice* to the landlord, not *permission*. For a more detailed discussion on the *plus two* permission requirement, see *The Family Child Care License* in this Handbook.

[11] See sample notices from Community Care Licensing at the end of this article.

[12] CAL. HEALTH & SAFETY CODE § 1597.531(b) (West 2004). For more detail on liability coverage, see CCLC's article, *Insuring Your Program: Liability Insurance*, 1999 Revised Edition of this handbook.

[13] CAL. HEALTH & SAFETY CODE § 1597.40(b) (West 2004).

on family child care provider tenants, unless state law expressly permits the restrictions or they also apply to other tenants.[14] Here are answers to some of the more common specific situations that arise for tenants:

1) **Can my landlord evict me?** In most cities and other communities in California, landlords are allowed to evict tenants without giving any reason at all; only a few cities require landlords to provide a reason for an eviction. However, the law provides some protection for family child care providers. If the landlord's ***only*** reason for eviction is that you have or are planning to start a licensed family child care home, then it is illegal for the landlord to evict you. But you will need convincing documentation in order to prove to the court that the law's protections should apply to you. If you believe you are being evicted just because you are operating a family child care home, you'll need to have excellent documentation of the statements the landlord has made and actions the landlord has taken that cause you to believe this is the ***sole*** reason for the eviction. It would be wise to consult an attorney specializing in tenant issues to assist you in bringing this information to the attention of the court.

   Remember that in *any* locality a landlord may evict any tenant, whether a family child care provider or not, for a material breach in the provisions of the lease. This means that a landlord can evict you if you fail to pay rent, disturb other tenants, or in any other way violate legal requirements that are in the lease. However, if the lease tries to prevent a tenant from running a family child care home, that provision is void and cannot be enforced by the landlord. But since you *can* be evicted for violating other lease provisions, it is critically important to be extra diligent in following the terms of your lease so that your landlord does not have a legitimate reason to evict you.

2) **Can the landlord raise my rent?** The landlord may not charge additional rent simply because a tenant operates a family child care program. Any rent increases must fall within the amounts permitted under state and local rent control laws, and no additional charge may be added because the tenant is a family child care provider.

3) **Can my landlord require a larger security deposit?** The landlord is entitled to charge the maximum security deposit permitted under California law to a family child care provider, even if the landlord charges the other tenants a smaller deposit. State law currently permits landlords to charge a security deposit in the amount of two months' rent on an unfurnished dwelling and three months' rent on a furnished dwelling (in addition to the first month's rent).[15] A landlord who has not already charged the maximum amount may increase the security deposit required with proper notice. If the tenant is renting month to month, only a 30-day notice is required. If the lease is for a longer term (for example, a year), the security deposit may not be increased until it is time to renew the lease.

4) **If a landlord tries to evict me, or to raise my rent, what can I do?** Ask your

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[14] CAL. HEALTH & SAFETY CODE § 1597.40(c) (West 2004).
[15] CAL. CIVIL CODE § 1950.5(c) (West 2004).

landlord to put any demand in writing, and respond in writing. Save copies of all correspondence and notices. If the landlord attempts to raise the rent because of your child care program, or gives you notice to "cease and desist" operating your child care program, you may respond by refusing to do so on the basis of California

Health and Safety Code Section 1597.40. This law clearly prohibits landlords from directly or indirectly limiting the use of residential property for family child care. It is always a good idea to consult with a lawyer before you respond, especially when the landlord cites non-child-care-related reasons for his actions. Whatever you choose to do, you will probably have to respond fairly quickly. Many local bar associations provide landlord/tenant information or can refer you to a landlord/tenant lawyer.[16]

Of course, the fact that a landlord may not bar you from providing child care in your home does not excuse you from other legal requirements and restrictions. You must still comply with licensing and fire clearance requirements. For example, the fire and building code may prevent you from operating a large family child care program in your home if your apartment is not located on the first story of your building. For another example, while a landlord may not legally require a provider/tenant to carry liability insurance as a condition of tenancy, state law requires that you have some form of liability coverage or affidavits from the parents in order to be licensed.[17] Because of this requirement, you may choose to carry liability insurance regardless of any lease provisions. But the choice is yours, and the landlord cannot refuse to rent to you if you choose not to get the coverage.

ARE RESTRICTIONS IN HOME OWNERS' ASSOCIATION DOCUMENTS LEGAL IF THE RESTRICTIONS PROHIBIT FAMILY CHILD CARE?

No. Though many homeowners' associations prohibit the use of a home as a business, the same rules apply to homeowners' associations as to landlords when it comes to operating a family child care program. Just as with landlords, the law prohibits homeowners' associations from preventing family child care providers from using their homes for child care.

SMALL FAMILY CHILD CARE HOMES: FIRE AND BUILDING SAFETY REQUIREMENTS, AND ZONING LAWS

FIRE REQUIREMENTS FOR SMALL FAMILY CHILD CARE HOMES

[16] State Bar certified lawyer referral services may be found in the Yellow Pages at the beginning of the section on attorneys, on the State Bar website at www.calbar.ca.gov by clicking on Public Services and then "Locating a local lawyer referral services", or by calling the State Bar at 1-866-422-2529.

[17] For more detail on liability coverage, see CCLC's article, *Insuring Your Program: Liability Insurance*, 1999 Revised Edition of this handbook.

A fire clearance by your local fire department is *not* required for small family child care providers as long as all of the children being cared for are ambulatory (able to leave a building unassisted under emergency conditions) or all are two years of age or younger.[18] However, when applying for a license, a small family child care provider must submit evidence that her or his home has a fire extinguisher and smoke detector device that meets standards established by the State Fire Marshal.[19] Your district licensing office can provide information on which equipment meets these standards.

Additional licensing standards that relate to fire safety include:

- Fireplaces and open-face heaters must be screened to prevent access by children.
- Gas heaters must be properly vented and permanently installed.
- Poisons, detergents, cleaning compounds, medicines, firearms, and other items (like highly flammable liquids) that could pose a danger to children must be stored in a place inaccessible to children.

The Department of Social Services also requires that you develop a written disaster plan on a form provided by the Department for getting the children out of the house in case of fire or other emergency.

ARE SMALL FAMILY CHILD CARE HOMES REQUIRED TO UNDERGO BUILDING INSPECTIONS?

No. Under current law, a building inspection is required only if you care for more than 14 children in your own home. Both small and large family child care homes are considered residential occupancies for the purposes of both state and local building codes. State law prohibits communities from imposing more rigorous building standards on family child care homes than they do on any other residential homes.[20]

DO ZONING RESTRICTIONS APPLY TO SMALL FAMILY CHILD CARE HOMES?

No. California law prohibits cities and counties from placing zoning restrictions on small family child care homes. Small family child care homes cannot be required to obtain a local land use permit, nor may they be required to obtain a local business license.

LARGE FAMILY CHILD CARE HOMES: FIRE AND BUILDING SAFETY REQUIREMENTS,

[18] CAL. HEALTH & SAFETY CODE § 1597.45(d) (West 2004).

[19] Cal. Code of Reg. § 102371. The portable fire extinguisher must have a minimum rating of 2A, 10B:C. The smoke detector should be a single station, residential-type smoke detector that is approved by the State Fire Marshal.

[20] CAL. HEALTH & SAFETY CODE § 1597.40(a) (West 2004).

AND ZONING LAWS

FIRE REQUIREMENTS FOR LARGE FAMILY CHILD CARE HOMES

Under state law, large family child care homes are classified as residential for the purposes of both

state and local fire and building codes, except that they must meet certain specific requirements.[21] No locality may adopt any fire regulations that are inconsistent with the state standards unless the regulation(s) apply to *all* single family residences.

When you plan to operate a large family child care home or to care for one or more non-ambulatory children, you must obtain a fire safety clearance from either (depending on which is locally designated) your local fire inspector or building inspector to ensure that your home meets state fire safety standards. In many localities there is a charge for the fire inspection. Generally, the fire or building inspector will check to see that your home has:

- Smoke detectors.[22] The inspector must approve the detectors and can determine their number and placement;
- A portable fire extinguisher of the proper type;[23]
- A device suitable for sounding a fire alarm, attached to the structure of your home and capable of being heard in a distinctive tone throughout your home. This does *not* mean you need a wired-in alarm system.
- A means by which every unenclosed gas-fired water heater or furnace in the child care area cannot be touched by the children;
- Two exit doorways to the outside, each at least 6 feet 8 inches tall and 32 inches wide. A manually operated horizontal sliding door may be one of the 2 exits. One of the exits may be through the kitchen.
- A place inaccessible to children where flammable materials are stored;
- A written disaster plan for getting the children out of the house in case of fire or other emergency; and
- Door locks that open from the inside without a key.

Generally, child care only on the first story. When the first story is above a private garage, the garage must be separated from the home by a one-hour fire resistive construction on the garage side.

The law allows each city or county to designate whether the building inspector or the fire inspector

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[21] CAL. HEALTH & SAFETY CODE § 1597.40(a) (West 2004).

[22] The smoke detector should be a single station, residential-type smoke detector that is approved by the State Fire Marshal.

[23] The portable fire extinguisher must have a minimum rating of 2A, 10B:C.

performs the fire safety inspection. If your locality has designated the building inspector, you may be subject to an inspection that encompasses more than fire safety. Check with your local licensing agency for specific safety standards that are likely to apply in your area.

WHAT CAN I DO IF MY HOME DOESN'T PASS THE FIRE INSPECTION?

It's likely that you will just need to buy more smoke detectors or a new fire extinguisher. However, if the problem is more serious, you may have to change a part of your home to meet the requirements. If you can't make changes, and if you think your home is fire-safe, you can ask the fire department to approve an "Alternate Means of Protection." Local fire departments vary greatly in their willingness to allow requirements to be met in this manner. For example, where a one-hour fire-resistive wall is specified in the code, sometimes painting the wall with fire-resistive paint is considered an alternate means of protection. If your request is denied, you can appeal to the State Fire Marshal.

If the State Fire Marshal denies the request, you can appeal the decision to the State Board of Fire Services: 1131 S Street, Sacramento, CA 95814, (916) 445-8200.

DO LARGE FAMILY CHILD CARE HOMES HAVE TO UNDERGO BUILDING SAFETY INSPECTIONS?

Under current law, this type of inspection is required only if you care for *more* than 14 children in your own home. Small and large family child care homes are considered residential occupancies for purposes of both state and local building codes.[24] Large family child care homes are classified as R-3 (residential, not educational) occupancies, so they do not have to meet expensive, sometimes impossible, educational occupancy standards. The classification also means that a building inspection (separate from a fire inspection) is not required for a family child care home serving 14 or fewer children. However, in localities where fire clearances are issued by the local building department, the inspector may cite problems with electrical wiring, converted garages, and other building safety specifications that apply to all residential properties.

WHAT LAWS GOVERN FIRE AND BUILDING INSPECTIONS?

Under California child care licensing law, large family child care homes are single family residences for purposes of both state *and* local building and fire codes.[25] The law also gives the State Fire Marshal authority to adopt specific fire and life safety requirements for large family child care homes. These requirements are found in Title 24, Part 2 of the California Administrative Code and must be applied uniformly throughout the state. No additional local requirements may be applied to large family child care homes unless the requirements apply to *all* single family residences, including those in which child care is not provided.

CAN ZONING PERMITS BE REQUIRED FOR FAMILY CHILD CARE HOMES?

California law prohibits cities and counties from requiring zoning permits for **small** family child

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[24] CAL. HEALTH & SAFETY CODE § 1597.40(a) (West 2004).
[25] CAL. HEALTH & SAFETY CODE § 1597.46(d) (West 2004).

care homes.[26] However, if you want to be licensed as a **large** family child care home, your city or county may require a zoning permit, called a "use permit."[27] Under state law, cities and counties may not prohibit large family child care homes on lots zoned for single family dwellings and must treat the home in one of the following three ways:

Option 1: Classify the home as a *permitted use of residential property* for zoning purposes. Under this option, large family child care homes are treated the same as small family child care homes and no conditional use permit is required. Many jurisdictions treat large family child care homes as permitted uses and have not encountered difficulties or neighborhood opposition in doing so.

Option 2: Grant a *non-discretionary permit* to use the property as a large family child care home. Under this option, operators of large family child care homes apply for a permit to use their property for family child care under a local ordinance that is limited in scope. The ordinance may only impose reasonable standards concerning spacing and concentration, traffic control, parking, and noise control. An administrator in the planning department would grant the non-discretionary permit to a provider who demonstrated compliance with the local requirements and a fire clearance as required by the law. A reasonable fee could be charged for such a permit. No notification to neighbors or public hearing is required, but there must be an appeal process you can follow if your permit is denied.

Option 3: Require a large family child care provider to apply for a *conditional use permit* before using the property as a large family child care home. Notice is only required to those within a 100-foot radius of the property and a public hearing is held only if requested. As with option 2, the scope of the local ordinance is limited to reasonable standards regarding parking, spacing, concentration, traffic control, and noise control.[28] And again, there must be an appeal process.

The law requires that applications for both conditional use permits and non-discretionary use permits be processed as economically as possible and fees may not exceed the actual cost the locality incurs.[29] Some cities and counties have recently begun requiring large family child care programs to obtain business licenses, either in addition to or instead of zoning use permits. While no law prohibits requiring a business license, under good public policy any business licensing requirements or fees should be reasonable.

Local jurisdictions that realize the value of an adequate supply of child care often define all family child care as "residential use" of a home (option 1) and do not require any zoning permit for large family child care homes. With the encouragement of providers, family child care associations, and other advocates, many California cities and counties have taken this approach. Politicians and policy makers are often convinced by the argument that child care should be located in residential neighborhoods (as are public schools), that family child care homes don't make much profit, and that they are more of a community service than a business.

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[26] CAL. HEALTH & SAFETY CODE § 1597.45(a) (West 2004).
[27] CAL. HEALTH & SAFETY CODE § 1597.46 (West 2004).
[28] CAL. HEALTH & SAFETY CODE § 1597.46.
[29] CAL. HEALTH & SAFETY CODE § 1597.46(a)(3).

HOW DO I FIND OUT IF MY CITY OR COUNTY REQUIRES A ZONING PERMIT FOR LARGE FAMILY CHILD CARE HOMES?

Large family child care homes are likely to be subject to some local zoning requirements. If you are unfamiliar with local requirements, the first place to check is with your family child care association or local child care resource and referral agency. If you do not know how to contact your local child care resource and referral agency, call the statewide network at 415-882-0234. If you are unable to get information about local zoning requirements from them, you can probably find out from your local planning department or the Community Care Licensing office.

If you do consult the planning department, you may want to do so anonymously. Obtaining a zoning permit is not required for licensing, and, in many places, the local zoning requirements are not generally enforced unless a neighbor complains or unless you are the one to make the initial contact with the planning department. When making inquiries, therefore, it may be wise to withhold your identity, at least initially. Once you have determined whether an ordinance requires a use permit and, if so, whether the ordinance complies with state law, you can decide whether to disclose your identity. Of course, in many localities you must obtain a zoning permit in order to bring your home into full compliance with the law.

WHAT MUST I DO TO GET A CONDITIONAL USE PERMIT?

The process varies somewhat from locality to locality, but the basic steps are the same.

1) File an application with the city planning department. The law requires the locality to process your conditional use permit as economically as possible.[30] Fees may not exceed the costs of the review and permit process.[31] If the fees seem excessive, alert your planning department to the state law and ask that they justify the charge.

2) The city will post or mail notices informing neighbors that you wish to use your home for large family child care. While some cities may require notice to neighbors within a 300-foot radius, this violates the state law limiting the notice to neighbors within 100 feet.

3) People who favor or oppose your planned use can express their views in writing to the planning commission. No public hearing is required unless you or another affected person (neighbor) requests one. If a hearing is held, the commissioners will listen to you and your supporters and to those who oppose your planned use.

4) The planning commission will do one of three things: (a) approve your request and grant the use permit; (b) deny the use permit; (c) issue the permit on the condition that you make certain changes in your property or that you operate your child care home in a way that will minimize the inconvenience to neighbors. Remember that any conditions must be limited to reasonable restrictions concerning traffic and noise

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[30] CAL. HEALTH & SAFETY CODE § 1597.46(a)(3) (West 2004).
[31] CAL. HEALTH & SAFETY CODE § 1597.46(a)(3) (West 2004).

control, parking, and spacing and concentration. The most common property condition is that you provide additional off-street parking spaces (usually one or

two). The most common operating condition is scheduling outdoor activities at certain times of the day to avoid disturbing neighbors. But make sure that the conditions address the problem; some cities have required providers to fence their yards, but that may not reduce noise. If your permit is denied, you may appeal the decision.[32]

ARCHITECTURAL ACCESSIBILITY FOR PEOPLE WITH DISABILITIES

MUST SMALL AND LARGE FAMILY CHILD CARE HOMES BE ACCESSIBLE TO PEOPLE WITH DISABILITIES?

Under the Americans with Disabilities Act (the "ADA"), it is illegal for child care providers to discriminate against children with disabilities or children whose family members have disabilities.[33] This means that providers may not deny services, fail to remove barriers, or fail to reasonably accommodate people with disabilities.[34] Since 1993, all child care providers, regardless of size, have been obligated to comply with the ADA.

Under this law, providers must make their homes accessible to people with disabilities wherever doing so is readily achievable.[35] The ADA was not intended to impose a significant financial burden on child care providers or other small businesses. Rather, the intent of the law is to require removal of barriers when this can reasonably be done. While the exact nature of each child care provider's responsibilities under the ADA can only be determined on a case by case basis, some general guidelines can help you determine the extent to which you are required to make your home accessible. These guidelines are all based on considerations of what is reasonable under the circumstances, taking into consideration the facility's resources and operating expenses.

HOW DOES A PROVIDER DECIDE WHETHER ACCESSIBILITY IS READILY ACHIEVABLE?

It is a child care provider's responsibility to remove barriers to accessibility wherever doing so would be "readily achievable," which means "easily accomplishable and able to be carried out without much difficulty or expense."[36] If your front door can only be reached by climbing a flight of steps, but your side door is at ground level, making the side door into an accessible entrance to your home may be readily achievable, even if this involves clearing the side walkway of toys, lawn furniture,

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[32] For further detail on zoning laws, see CCLC's publications *A Child Care Advocacy Guide to Land Use Principles* (2003).

[33] Americans with Disabilities Act (ADA), 42 U.S.C. §§ 11282 (West 2004). For more information on the ADA and Child Care, see CCLC's publication *Caring for Children with Special Needs*, included as Chapter XX in the Family Child Care Manual.

[34] 42 U.S.C. § 1282(b)(2)(A)(ii) (West 2004).

[35] 42 U.S.C. § 1282(b)(2)(A) (West 2004.

[36] 42 USC § 12181(9) (West 2004).

weeds, overgrown brush, and any other obstacles to a wheelchair. If the walkway to the side door is not smooth or level enough for a wheelchair, you may need to take readily achievable measures to remedy that, also. And if that side door is one step up from the ground, supplying a portable wooden or rubber ramp, or adult assistance in climbing that step may also be readily achievable. On the other hand, particularly for small family child care providers, building a permanent ramp to the front door may not always be readily achievable, due to the cost of installation.

Not all child care providers are excused from building permanent ramps in order to reasonably accommodate people with disabilities, but many family child care providers are likely to be excused. Nonetheless, some programs may be able to plan and implement significant changes over time. If planning over a period of years would make barrier removal readily achievable, the law may require doing so. Generally, under the ADA, a provider need not make physical changes to her or his home if doing so would involve more than a little difficulty or expense over the projected time of implementation. Whether something is expensive or difficult is measured by the relative size and budget of your operation, with an eye to reasonableness.[37]

Each time a child with a disability applies to your program, you should assess what that child needs, whether your home or facility contains barriers to that child's access to your care, and whether any readily achievable options would enable you to meet that child's needs. Most architectural barrier removal, though, will have to be done through pre-planning to minimize the financial impact and to overcome the time element required to make the changes.

Removal of barriers in your home, wherever readily achievable, is only required in the parts of the home that are partially or exclusively used for child care.[38] The outdoor environment, such as play areas, must also be accessible. If you are contemplating making additions to your house, any new rooms that you will use for child care must be made accessible, regardless of expense.[39]

Some cities or counties have ordinances that reach beyond the ADA. These local laws may require some homes to be accessible to people with disabilities (the specified size of homes required to comply may vary among municipalities). The applicability of such regulations to family child care homes has not yet been settled legally. If your city has such a law and it applies to child care homes, you may have to build a wheelchair ramp unless your home has at least one ground-level entrance. Many cities or counties will waive this requirement upon request or allow you to accommodate children with disabilities through alternate means.

California law provides even greater protection than the ADA. Under the Unruh Civil Rights Act (Unruh), providers must make a case-by-case assessment of each child with a medical condition, not just each child with a disability.[40] Once a provider understands the child's needs, s/he must provide care for the child unless the needed accommodations are not "reasonable."[41]

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[37] The U.S. Department of Justice has written a Technical Assistance Manual for Readily Achievable Barrier Removal. This manual gives informal guidance to assist in understanding the ADA and can be found at http://www.usdoj.gov/crt/ca/ada/adata1.pdf.

[38] 28 C.F.R. § 36.207.

[39] 42 USC § 12183(a) (West 2004).

[40] CAL. CIV. CODE § 51(b) (West 2004).

[41] CAL. CIV. CODE § 51(f); 28 C.F.R. § 36.302 (2005).

If you are required to build a ramp or make other modifications, or if you choose to do so in order to better serve children with special needs, government funds, private grants or tax benefits may be available for this purpose. Contact your local Center for Independent Living for more information about government assistance and/or tax benefits for these projects.[42]

[42] See *Caring for Children with Disabilities* in this Handbook for a description of some of the new tax benefits available and for additional guidelines on making your home accessible.