

# KNOW THE LAW FOR CITIES AND COUNTIES

## Is My City following California Law for Family Child Care Homes?

---

The California Child Day Care Facilities Act (“the Act”) prohibits local regulation of small and large family child care homes.<sup>1</sup> The state law also preempts (supersedes) local zoning, building, and fire codes and regulations.<sup>2</sup>

[Senate Bill 234](#) updated the Act to encourage and support family child care homes, so parents can work and children can thrive. This new law became effective January 1, 2020.

### 1. What is a family child care home?

Family child care homes are a community asset. They are the primary source of affordable care for babies and toddlers and offer a warm environment for all children. A family child care home is “a home that regularly provides care, protection, and supervision for 14 or fewer children, in the child care provider’s own home, for periods of less than 24 hours a day, while the parents or guardians are away, and is either a large family daycare home or a small family daycare home.”<sup>3</sup>

A family child care home is located in a residential area, considered an accessory use of residentially zoned property, and its use does not “fundamentally alter the nature of the underlying residential use.”<sup>4</sup> Large and small family child care homes are allowed in single-family homes, apartments, condos, townhouses, duplexes, and all other multi-family buildings, and must be licensed by the California Department of Social Services, Community Care Licensing Division.<sup>5</sup>

Many parents with young children prefer family child care homes because of their convenient locations, flexible hours, and home-like environment that is conducive to a child’s development.

### 2. What is the difference between a small and large family child care home?

---

1 Cal. Health & Safety Code §§ 1597.30 et seq.

2 Cal. Health & Safety Code § 1597.40 (b).

3 Cal. Health & Safety Code § 1596.78(a). Family child care homes are also referred to as “family daycare homes.” The law and many child care advocates prefer the term family child care home. “The term “Family Child Care” supersedes the term “Family Day Care” as used in previous regulations. Cal. Code of Regs., tit. 22, § 102352(f)(1).

4 Cal. Health & Safety Code §§ 1597.40(a), 1597.43(a), 1597.45.

5 Cal. Health & Safety Code §§ 1596.80, 1597.53. Types of child care that are exempt from state licensing are listed under Cal. Health & Safety Code § 1596.792.

A **small family child care home** must have one adult child care provider who is the person living in the licensed home and some have an assistant. Small family child care providers may care for 6 children at a time, and up to 8 children if four conditions are met.<sup>6</sup>

A **large family child care home** must have one adult child care provider who is the person living in the licensed home. At least one additional assistant child care provider is required whenever the child care capacity exceeds the capacity of a small licensed family child care home. Large family child care providers may care for 12 children at a time, and up to 14 children if four conditions are met.<sup>7</sup>

Since SB 234 became the law on January 1, 2020, both small and large family child care homes must be considered a residential use of property.<sup>8</sup> Therefore, cities and counties cannot require family child care providers to obtain a zoning permit or business license. Local governments cannot apply any requirements to family child care homes that are not applied to all other residences with the same zoning designation.

### 3. Can my city or county impose requirements specific to family child care homes?

No. Large and small family child care homes must “be considered a residential use of property and a use by right for the purposes of all local ordinances, including, but not limited to, zoning ordinances.”<sup>9</sup> Cities and counties cannot apply requirements to small or large family child care homes, unless the requirements are identical to those applied to all residences without a family child care home.<sup>10</sup> For example, your local government cannot require that small or large family child care providers obtain a business license or zoning permit for operating a family child care home.<sup>11</sup>

### 4. Can my city or county require a family child care home to obtain a business license?

No. The law clearly states: “local jurisdiction shall not impose a business license, fee, or tax for the privilege of operating a small or large family daycare home.”<sup>12</sup> Local governments could previously require that large family child care homes obtain a business license, but SB 234 now prohibits this.

### 5. Can my city or county require a family child care home to obtain a zoning permit?

No. The law states that family child care homes must be considered “a residential use of property and a use by right for the purposes of all local ordinances, including, but not limited to, zoning ordinances.”<sup>13</sup> Local governments were previously allowed to require that large family child care homes obtain a zoning permit, but SB 234 now prohibits this.

---

<sup>6</sup> Cal. Health & Safety Code § 1597.44.

<sup>7</sup> Cal. Health & Safety Code § 1597.465.

<sup>8</sup> Cal. Health & Safety Code § 1597.45.

<sup>9</sup> Cal. Health & Safety Code § 1597.45(a).

<sup>10</sup> Cal. Health & Safety Code § 1597.45(e).

<sup>11</sup> Cal. Health & Safety Code § 1597.45(a)-(b).

<sup>12</sup> Cal. Health & Safety Code § 1597.45(b).

<sup>13</sup> Cal. Health & Safety Code § 1597.45(b).

## 6. Can my city or county impose fire requirements on family child care homes?

Local governments **cannot require small family child care homes** to undergo a fire inspection.<sup>14</sup>

A city or county fire department, the district providing fire protection services, or the State Fire Marshal **must approve a fire safety clearance for large family child care homes**.<sup>15</sup> A fire department may only require large family child care homes to comply with fire standards adopted by the State Fire Marshal, which are found in the California Code of Regulations Title 24. The fire standards must be applied uniformly to family child care homes throughout the state.<sup>16</sup> “A city, county, or district shall not adopt or enforce a building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes that is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to all residences with the same zoning designation in which childcare is provided.”<sup>17</sup> The [STD 850](#) form is used for fire inspections of large family child care homes.<sup>18</sup>

## 7. Can local governments require large family child care homes to obtain a building permit without any structural changes?

Your city or county cannot require a family child care provider to obtain a building permit solely based on operating a family child care home.<sup>19</sup> Family child care homes are considered a residential use of property and a use by right for the purposes of all local ordinances.<sup>20</sup> Use of a home as a family child care home also does not constitute a change of occupancy for state housing law or local building codes.<sup>21</sup>

## 8. Can my city or county apply CEQA requirements to family child care homes?

No. Small and large family child care homes are exempt from the California Environmental Quality Act (CEQA).<sup>22</sup>

## 9. Are family child care homes subject to local environmental impact standards?

Your city or county may apply environmental impact standards that are required in a local ordinance only if the same requirement applies to *all* residences with the same zoning designation.<sup>23</sup> For example,

---

<sup>14</sup> Cal. Health & Safety Code § 1597.455 (small family child care homes are not subject to fire inspections, but Licensing must ensure they have a fire extinguisher, smoke detector, and carbon monoxide detector that meet the State Fire Marshal standards); Cal. Code of Regs., tit. 22, § 102371(b).

<sup>15</sup> Cal. Health & Safety Code § 13235, Cal. Code of Regs., tit. 22, § 102371; See Cal. Health & Safety Code § 1597.46 (rules for large family child care homes).

<sup>16</sup> Cal. Health & Safety Code § 1597.46(a).

<sup>17</sup> Cal. Health & Safety Code § 1597.46(c).

<sup>18</sup> See Cal. Health & Safety Code § 1597.46(a); Cal. Code of Regs., tit. 22, § 102371; Cal. Dep’t of Forestry and Fire Protection, Fire Safety Inspection Request STD 850, Cal. Dep’t of Forestry and Fire Protection, Fire Safety Inspection Request STD 850, (Oct. 2019), <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std850.pdf>.

<sup>19</sup> See Cal. Health & Safety Code § 1597.45(e).

<sup>20</sup> Cal. Health & Safety Code § 1597.45(a).

<sup>21</sup> Cal. Health & Safety Code § 1597.45(c).

<sup>22</sup> Cal. Health & Safety Code § 1597.45(d)(exempting small and large family child care homes from the Public Resources Code, Division 13, which contains the California Environmental Quality Act).

<sup>23</sup> Cal. Health & Safety Code § 1597.45(e); See Cal. Health & Safety Code §§ 1597.42, 1597.43.

if your city requires a family child care home to conduct an environmental impact study on its ground water, the same requirement must be applied to all residences that are not family child care homes.

The Act makes clear that neither a small nor a large family child care home is considered a change in occupancy for purposes of state or local building codes.<sup>24</sup>

## 10. How should my planning department handle complaints about family child care homes?

If neighbors have concerns about a family child care home, we recommend you encourage them to speak directly with the family child care provider to work out any problems. We also urge you to refer neighbors to their local [Child Care Resource and Referral agency](#), [Child Care Advocate Program](#), or [Child Care Regional \(Licensing\) Office](#).<sup>25</sup>

## 11. What is the state law that sets the requirements for family child care in California?

The California Child Day Care Facilities Act (“the Act”), Cal. Health & Safety Code §§ 1596.70 *et seq.*, is the comprehensive law that establishes a statewide system for licensing child care. The Act preempts (supersedes) local zoning, building, and fire codes and regulations that conflict with its provisions.<sup>26</sup> The law aims to increase the availability of family child care, so parents can work and attend school and children can thrive.<sup>27</sup>

## 12. Why does California law have special protections for family child care homes?

The Act strictly limits city and county regulation of family child care homes in order to address the lack of child care availability, encourage the establishment of family child care homes in residential communities, and to ensure a simplified regulatory process that does not place undue burdens on providers.<sup>28</sup> Despite the high demand for family child care, it remains in very short supply.

The scarcity of licensed child care in California is at a crisis level; only 23% of children with working parents who need child care, can find it. And in some counties, the percentage of child care availability is even lower and continues to decline.<sup>29</sup>

Extra costs, like zoning permits and business licenses, are passed onto parents who typically pay 15 to 35 percent of their income on child care.<sup>30</sup> Another reason for the lack of child care is poverty-level wages for child care providers. On average, a child care worker in California earns just over \$30,000 per year,

---

<sup>24</sup> Cal. Health & Safety Code § 1597.45(c).

<sup>25</sup> Anyone may contact the local child care resource and referral agency to help problem solve concerns or issues about a child care. The Child Care Advocate Program is a department of the California Department of Social Services. The child care advocate plays many roles, including educating the public about licensed child care and speaking with community members about child care complaints or concerns. Information on the Child Care Advocate Program is available at Cal. Dep’t of Soc. Services, Child Care Advocate Program, <https://www.cdss.ca.gov/inforesources/child-care-licensing/child-care-advocates>. The list of regional Community Care Licensing Division Child Care Offices can be found at [https://www.cdss.ca.gov/Portals/9/CCLD/CCP Documents/CCLD\\_CCL\\_RO\\_Contacts.pdf](https://www.cdss.ca.gov/Portals/9/CCLD/CCP Documents/CCLD_CCL_RO_Contacts.pdf).

<sup>26</sup> Cal. Health & Safety Code § 1597.40(b).

<sup>27</sup> See Cal. Health & Safety Code §§ 1596.70, 1596.73(e), 1597.30, 1597.40.

<sup>28</sup> Cal. Health & Safety Code § 1597.30.

<sup>29</sup> The California Child Care Resource & Referral Network, *California Child Care Portfolio* (2017), <https://rrnetwork.org/assets/general-files/2017-Child-Care-Portfolio-ALL.pdf>. The California Child Care Portfolio data is also provided to the Lucile Packard Foundation for Children’s Health, *Kidsdata.org* (2017), <http://www.kidsdata.org>.

<sup>30</sup> The California Child Care Resource & Referral Network, *California Child Care Portfolio* (2019), <https://rrnetwork.org/assets/general-files/California-06-20.pdf>.

and even less if the child care is operated in the provider’s home.<sup>31</sup> The updated family child care protections in SB 234 will help relieve the financial burdens on family child care providers and parents, and increase the availability of home-based care.

### 13. What state law sets the licensing and health and safety requirements for family child care?

The California Child Day Care Facilities Act (“the Act”), Cal. Health & Safety Code sections 1596.70 *et seq.*, is the law that governs state health, safety, and licensing requirements of all child care facilities, including family child care homes. The corresponding rules for child care are found in California Code of Regulations, title 22, sections 102351.1 *et seq.* (family child care homes) and 101151 *et seq.* (child care centers).

### 14. What state agency regulates child care?

The California Department of Social Services, Community Care Licensing Division (“CCLD”) evaluates family child care homes and child care centers and determines whether they meet the state health and safety requirements in order to be licensed.<sup>32</sup> CCLD also conducts ongoing, unannounced inspections of all family child care homes and child care centers, and ensures child care providers meet the training requirements to care for children.<sup>33</sup>

---

© Child Care Law Center 2020



This publication was written by Laurie Furstenfeld, Senior Staff Attorney, Child Care Law Center.

Permission to reproduce, transmit or disseminate this information may be requested by mail or email: [info@childcarelaw.org](mailto:info@childcarelaw.org)

This publication is intended to provide general information about the topic covered. It is made available with the understanding that the Child Care Law Center is not engaged in rendering legal or other professional advice. We believe it is current as of October 2020 but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.

---

<sup>31</sup> Bureau of Labor Statistics, U.S. Department of Labor, May 2019 State Occupational Employment and Wage Estimates California, <https://www.bls.gov/oes/current/oes399011.htm>.

<sup>32</sup> “The core mission of the Child Care Licensing Program is to ensure the health and safety of children in care. The Child Care Licensing Program strives to provide preventive, protective, and quality services to children in care by ensuring that licensed facilities meet established health and safety standards through monitoring facilities, providing technical assistance, and establishing partnerships with providers, parents, and the child care community. The Child Care Licensing Program provides oversight and enforcement for licensed Child Care Centers and Family Child Care Homes through 19 Regional Offices located throughout California.” Cal. Dep’t of Soc. Serv., Community Care Licensing Division, Child Care Licensing, *available at* <https://cdss.ca.gov/inforesources/child-care-licensing> (last visited Oct. 7, 2020).

<sup>33</sup> See Cal. Dep’t of Soc. Serv., “Welcome to the California Child Care Licensing Program” at <http://www.cclcd.ca.gov/pg411.htm> (last visited Oct. 7, 2020).