



**City of McMinnville**  
**Planning Department**  
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## **EXHIBIT 4 - STAFF REPORT**

**DATE:** May 20, 2021  
**TO:** Planning Commission Members  
**FROM:** Heather Richards, Planning Director  
**SUBJECT:** (Docket G 1-21) – Amending the Zoning Ordinance to Reduce Regulatory Barriers for Child Care and Align the City’s Code with State Regulations.

### **STRATEGIC PRIORITY & GOAL:**



### **GROWTH & DEVELOPMENT CHARACTER**

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community

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### **Report in Brief:**

This is the consideration of proposed amendments to the McMinnville Municipal Code, Chapter 17, Zoning Ordinance, to reduce regulatory barriers for child care and align the City’s code with state regulations.

The Planning Commission hosted a public hearing on this proposal on April 15, 2021. They closed the public hearing on the same day but elected to keep the record open for written comments until April 30, 2021 per the request of the Department of Land Conservation and Development.

### **Background:**

Currently child care is allowed as an outright permitted use in residential zones if it occurs in a residential dwelling unit and twelve or fewer people are present at any one time. In all other scenarios it is a conditional use process.

Recently the provision of available child care has emerged as a barrier for parents to work, and for employers to access necessary workforce. With the pandemic it has become an even more significant barrier for women to be in the workforce.

Cities are starting to review their zoning ordinances to evaluate how they can remove regulations which may be preventing the development of more child care opportunities in their communities.

The City of McMinnville was asked to evaluate its zoning ordinance for the same purpose.

On November 19, 2020, city staff conducted a work session with the Planning Commission to discuss the current code regulations for child care, state regulations and opportunities to revise the city's code to better emulate state regulations and to create an easier path towards success for child care providers. At that time, Planning Commission asked staff to bring back some proposed amendments to the zoning ordinance to remove regulatory barriers for child care providers in McMinnville.

On April 15, 2021, the Planning Commission hosted a public hearing on proposed code amendments to the McMinnville Municipal Code, Chapter 17, Zoning Ordinance that would remove regulatory barriers for child care opportunities and align the City's code with state regulations.

There are three different types of child care facilities licensed in the State of Oregon per Oregon Administrative Rules (OAR) 414-200-0415 – 414-350-0415.

- **Registered Family Child Care Home:** A facility in the provider's own home in which up to 10 children receive child care, including the provider's own children. (OAR 414-205-0000 to OAR 414-350-0170).
- **Certified Family Child Care Home:** A facility in the provider's own home, in which up to 16 children received child care, including the provider's own children, regardless of full-time or part-time. The number of children depends upon the physical size of the home, provider qualifications, and the number of qualified caregivers. (OAR 414-350-0000 to OAR 414-350-0405).
- **Child Care Center:** A facility, usually located in a commercial building, in which children receive care. The number of children allowed depends on the physical size of the facility and the number of qualified staff members. (OAR 414-300-0000 to OAR 414-200-0415).

Oregon Revised Statute 329A.440 governs how cities and counties can regulate certain types of child care facilities. Per ORS 329A.440, registered family child care homes and certified family child care homes shall be considered a residential use of property for zoning purposes and shall be permitted uses in all areas zoned for residential or commercial purposes. A city cannot enact or enforce zoning ordinance prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.

***329A.440 Application of zoning ordinances to registered or certified family child care homes.***

*(1) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.*

*(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.*

*(3) A county may:*

*(a) Allow a registered or certified family child care home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;*

*(b) Impose reasonable conditions on the establishment of a registered or certified family child care home in an area zoned for farm use; and*

*(c) Allow a division of land for a registered or certified family child care home in an exclusive farm use zone only as provided in ORS 215.263 (9).*

*(4) This section applies only to a registered or certified family child care home where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. [Formerly 657A.440]*

Thus, in McMinnville, any zone that allows residential dwelling units needs to allow **registered family child care and certified family child care homes** as an outright permitted use. Currently the code limits child care facilities to a maximum of twelve people as an outright permitted use. The proposed amendments bring the code into compliance with ORS 329A.440, allowing child care homes in the R1 (Single Family Residential), R2 (Single Family Residential), R3 (Two-Family Residential), R4 (Multi-Family Residential), R5 (Multiple Family Residential) and OR (Office Residential) zones.

The proposed amendments also allow for **child care centers** to be considered as permitted outright uses in City-owned parks or recreation facilities, public schools or conforming private schools in the same zones: R1 (Single Family Residential), R2 (Single Family Residential), R3 (Two-Family Residential), R4 (Multi-Family Residential), R5 (Multiple Family Residential) and OR (Office Residential) zones, and as conditional uses if located in facility that is not a City-owned park or recreation facility, public school or conforming private school in the same zones.

And the proposed amendments allow for **registered child care and certified family child care homes** and **child care centers** to be considered permitted outright uses in all commercial zones (C1, C2 and C3), and then in the light industrial zones (M-L, M-1). **Child care centers** are conditional uses in the M2 zone.

Lastly, the proposed amendments require one off-street parking space per on-site employee for all child care facilities and child care centers, and a designated pick-up and drop-off zone for two vehicles, which can be on-street parking if it is not immediately adjacent to another use.

**Discussion:**

The Planning Commission closed the public hearing on April 15, 2021 and left the record open for written comments until April 30, 2021 per the request of the Department of Land Conservation and Development.

After the close of the public hearing, planning commissioners asked staff to research the following questions:

1. *Can Cities regulate how many child care homes are allowed in attached residential dwelling units?*

Answer: No, state law requires that cities allow registered and certified child care homes in all residential units.

2. *Can developers or Home Owner’s Associations prevent the location of child care facilities in a neighborhood through the use of Covenants, Conditions and Restrictions (CC&Rs)?*

Answer: Yes, unless the state regulations expressly prohibit that ability to restrict land uses through CC&Rs, developers and/or Home Owner’s Associations can restrict the presence of child cares in neighborhoods through the use of CC&Rs.

3. *What is the number of children allowed per square foot of space for registered and certified child care homes and child care centers?*

Answer: This is a variable determination based upon the age of the children and the number of adults present. Please see attached Oregon Department Early Learning Division Rule Handbooks for Register Child Care Homes, Certified Child Care Homes and Child Care Centers.

### **Changes Made to the Proposed Amendments Since the Public Hearing:**

- Added the provision of allowing child care centers as outright permitted uses in the residential zones when located in a City-owned park or recreation facility, public school or conforming private school, as many as those facilities are located in residential zones and provide after-school child care.
- Revised the language for the number of children allowed for registered and certified child care homes per the recommendation of the Department of Land Conservation and Development.
- Added “on-site” employee parking to the parking standards per the Planning Commission recommendation.

### **Attachments:**

- Exhibit A: Decision Document
- Exhibit B: Proposed Amendments
- Exhibit C: Oregon Dept Early Learning Division, Rules for Registered Family Child Care Homes
- Exhibit D: Oregon Dept Early Learning Division, Rules for Certified Family Child Care Homes
- Exhibit E: Oregon Dept Early Learning Division, Rules for Family Child Care Centers

### **Fiscal Impact:**

There is no immediate fiscal impact to the City of McMinnville with this action.

### **Recommendation:**

Staff recommends the Planning Commission recommend the proposed code amendments to the McMinnville City Council for adoption.

**“THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY STAFF, THE PLANNING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE THE PROPOSED ZONING ORDINANCE TEXT AMENDMENTS PRESENTED IN DOCKET G 1-21.”**