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To: "Direct to Mayor and Council - DL"

Date: 8/24/2023 1:05:02 PM

Subject: Memo - Childcare Facilities in Residential Zones

Attachments: ACCS - GM - Memo (Council) - Childcare in Residential Zones - 2023-08-31.pdf

Hello Mayor & Council,

The attached memo from Branislav Henselmann, Acting GM of Arts, Culture and Community Services, provides information for Mayor and Council in response to recent public and media queries relating to a childcare application at 845 West 20th Avenue, and broadly on the issue of regulations for childcare in residential zones. Also appended to this memo are staff responses to specific questions from Council and the Mayor's Office.

A few key points:

- While childcare is officially the responsibility of the province, the City of Vancouver has provided over 5,000 childcare spaces to date, representing 60% of available spaces for children aged 0-5.
- For up to 8-space childcare programs, with a residential component, development permits are not required.
- For childcare programs in residential zones, a resident must occupy some portion of the site.
- Staff are currently working to address key issues that been identified by staff as it pertains to this issue, and to the expansion of childcare more broadly on: Clarifying the childcare definition in the Zoning Bylaw; Updating childcare parking requirements; Streamlining permit requirements; and, Harmonize childcare design guidelines.

Should you have any further questions, in Sandra Singh's absence, please contact Branislav Henselmann at branislav.henselmann@vancouver.ca and he will make sure to respond through the regular weekly Q&As.

Warmly,

Armin

Armin Amrolia - Deputy City Manager (she/her)
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The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̓əm/Musqueam, Sḵwx̱w̱ú7mesh/Squamish and səliłwətał/Tsleil-Waututh nations

MEMORANDUM

August 24, 2023

TO: Mayor & Council

CC: Paul Mochrie, City Manager
Armin Amrolia, Deputy City Manager
Karen Levitt, Deputy City Manager
Theresa O'Donnell, General Manager, Planning, Urban Design, and Sustainability
Andrea Law, General Manager, Development, Buildings and Licensing
Maria Pontikis, Chief Communications Officer, CEC
Rosemary Hagiwara, Acting City Clerk
Teresa Jong, Administration Services Manager, City Manager's Office
Mellisa Morphy, Director of Policy, Mayor's Office
Trevor Ford, Interim Chief of Staff, Mayor's Office
Sandra Singh, General Manager, Arts, Culture and Community Services

FROM: Branislav Henselmann, Acting General Manager, Arts, Culture and Community Services

SUBJECT: Childcare Facilities in Residential Zones

RTS #: N/A

PURPOSE

This memo provides information for Mayor and Council in response to recent public and media queries relating to a childcare application at 845 West 20th Avenue, and broadly on the issue of regulations for childcare in residential zones. Also appended to this memo are staff responses to specific questions from Council and the Mayor's Office.

BACKGROUND

In June 2022, City Council adopted [Making Strides: Vancouver's 10-year Childcare Strategy](#), which aims to support access to a new universal system of early care and learning led by provincial and federal governments. In Q4 2023, staff plans to report back to Council on the Childcare Strategy Implementation Plan; a roadmap for the City's childcare policies and priorities. Specifically, the report back will focus on streamlining permit approvals, clarifying childcare facility requirements and harmonizing with BC Childcare Facility Design Standards.

DISCUSSION

The Province of British Columbia holds primary responsibility for childcare, and focuses its childcare funding and support resources to help expand non-profit and publicly owned childcares across BC with the goal of creating an affordable, universal and public system of childcare. While the City of Vancouver acts as a regulator for all land use, its key role in childcare is to provide support in fulfilling senior governments' commitment to creating and accelerating the development of a universal childcare system. The Province of BC has signalled it will prioritize childcare investments towards creation of and support for "Indigenous Government, non-profit and/or public, and family-based child care".

Childcare Landscape in Vancouver

Although childcare is primarily the responsibility of the Provincial government, the City of Vancouver has created over 5,000 licensed childcare spaces to date. This translates to the overall City contribution of 60% of all licensed spaces for children under 3 years, and 35% of all existing licensed childcare spaces for children aged 0-12 years.

As seen in Table 1 below, there are currently 2,989 new childcare spaces for 0-5 year olds in planning and development in the City of Vancouver.

Table 1: Childcare Spaces in Planning and Development

| | # of Projects | # of Childcare Spaces |
|--|---------------|-----------------------|
| Approved for rezoning, or at DP stage, or under construction | 37 | 2039 |
| In Rezoning (rezoning enquiries and rezoning applications) | 21 | 786 |
| In Planning (Pre-rezoning enquiry/application, Pre-DP) | 4 | 164 |
| TOTAL | 62 | 2989 |

As seen in Table 2 below, approximately 57% of these spaces will be City-owned and 27% public or non-profit owned and 16% will be either privately owned or ownership not yet determined. The City of Vancouver strives to include childcare in all City-owned projects where childcare is suitable and viable.

Table 2: Childcare Spaces by Ownership Type

| | % of Projects | % of Childcare Spaces |
|----------------------------------|---------------|-----------------------|
| City-owned | 53% | 57% |
| Public or Non-Profit Owned | 21% | 27% |
| Privately-Owned or Ownership TBD | 26% | 16% |
| | 100% | 100% |

Please note that the current estimated shortfall (i.e. need) for licensed childcare spaces in Vancouver is 14,911, compared to 16,274 in 2019. This 8% decrease in the estimated shortfall is directly attributed in creation of licensed childcare spaces for children aged 0-5.

Childcare Applications in Residential Zones

Childcare is a conditional use in nearly all zones in Vancouver (it is excluded in heavy industrial zones). A brief overview of childcare regulations and guidelines is provided in Appendix A.

Please note: The City has made a number of changes to accommodate up to 8 space childcares within the Family Childcare and In-Home Multiage Childcare policy. To facilitate this, and avoid the need for development permits, the City Zoning By-law was updated to include a definition for residential childcares to allow in-home childcare programs for up to 8 spaces.

In recent years, the City has seen a notable increase in the number of licensed group childcares, that does not allow operators to live within the designated childcare space, whether it be in residential or non-residential zones. If in residential zones, license holders would need alternate space on-site available for residential occupancy (per City Zoning By-laws) or request their site be rezoned from residential to institutional use.

Further, the City has also seen an increase in the number of applicants looking to open (or expand) childcare facilities without on site residents in residential zones. For example, an applicant may propose to open a 24-space childcare facility using the primary, secondary and laneway suites, all on the same site. With no one residing on-site, this effectively changes the land use from residential to institutional and a rezoning permit review is required.

If a daycare provider intends to operate a childcare facility with more than 8 spaces on a residential property; this could trigger building safety and fire code updates signaling a change of use which would then result in the operator having to require a Development Permit.

There are a number of challenges that staff have identified with respect to childcare provision in residential zones:

- Parking: Childcare facilities are required to ensure that adequate parking and drop-offs are situated either on the premises itself or secured in a nearby location. City staff often waive the requirement for two staff parking stalls, but request on-site spaces to accommodate at least a minimum amount of on-site for pick-up/drop-off needs, due to concerns about, accessibility, safety, traffic flow, and overall impact on the surrounding neighborhood.
- Outdoor play space: Due to the lot size of single family homes, childcare facilities in residential zones are often unable to accommodate sufficient outdoor space to meet the minimum Provincial Childcare Licensing requirements of 6 square meters per child, while also maintaining planning requirements for yard setbacks, driveways, site coverage, etc.
 - Note: If a public park is within safe walking distance from the home, park space *may* be considered for daily outdoor play space to supplement onsite outdoor play, but is subject to the Childcare Licensing Officer's assessment of the safety and suitability of the park, and Park Board staff's assessment of park capacity on a site-specific basis, accounting for pressures from existing residential and childcare uses at that park. Because of the challenges in utilizing public park space to support the Provincial license status of private childcare businesses, the City expects applicants for full-day childcare programs to provide a minimum amount of on-site outdoor play space that is suitable, functional, and licensable.

- Building Code and Fire Code - The conversion of a building from a residential use to institutional use would be considered a major change of occupancy, and may trigger Vancouver Building By-law upgrades such as fire separation, sprinklers and other building code upgrades.
- Potential loss of housing units – With an increasing number of childcare facilities proposed in residential zones, there could be a loss of rental housing given it could be more profitable for a landlord to operate a private childcare facility in a home than to rent the home for childcare than to residential tenants.

As of August 22, 2023, there are three development permits under review for new childcare spaces for 0–5-year-olds in Residential zones, proposing a combined total of 50 new spaces. Note; that actual licensed capacity for a childcare may change between enquiry/application and opening, due to City zoning, development and building requirements as well as the guidelines applicable to all childcare and non-childcare permit applications. In addition, these may also be subject to the Childcare Licensing mandatory regulations and Provincial Building Bylaw requirements.

From 2016 to August 2023, over 200 development permit applications for childcare in Residential zones were Approved, Issued, or Completed and three were denied including the application at 845 West 20th Avenue. The rationale for the denial are:

- Unsatisfactory proposed use (changing from residential-primary to institutional childcare use without an operator in residence);
- Non-compliance with regulations of the Zoning and Development By-law applicable to all permit applications, including non-compliance with setbacks, floor space ratio, site coverage, etc.;
- Insufficient parking, with particular concern for safety of pickup/drop off of young children with limited mobility, and potential for disruption of nearby residential, commercial and institutional uses during pickup/drop off times.

Responses to specific questions from Councillors and the Mayor’s Office related to the application at 845 West 20th Ave are provided in *Appendix B*.

Additional Context

Jurisdictional scan: It is common practice for jurisdictions to require residential use as the primary use in residential zones. A preliminary scan shows that in 20 out of 21 Metro Vancouver jurisdictions, childcare is not a permitted primary use in RS zones, with residential use required to be the primary use, alongside childcare as a secondary use. A more detailed jurisdictional scan is provided in *Appendix C*.

Family childcare: Currently there are 163 childcare licenses for Family and In-Home Childcare; Provincially-determined enrollment capacity ranges between 3-8 children per license, depending on the size of unit. In addition to enabling Family Childcare and In-Home Childcare without a development permit, the City’s support for home-based childcare includes the commitment for and creation of new housing units that are purpose-built for secured, long-term use as

residential childcare. Currently, there are 7 units of City-initiated, purpose built family childcare currently operating 41 childcare spaces, and an additional 13-18 units in planning phases (with 120-130 additional childcare spaces expected).

NEXT STEPS

Staff are currently working to address key issues that been identified by a cross departmental staff working group focusing on the childcare development process:

- Clarifying the childcare definition in the Zoning Bylaw: Staff are working to align the childcare definition in the Zoning Bylaw with the original intent of the definition, consistent with the Childcare Licensing definitions of Family Childcare or In-Home Multi-Age care, both of which requires childcare to be provided within a licensee's personal residence. This will increase consistency with the intent of the City's residential zones and will continue to allow for family childcare opportunities, with minimal City oversight. The definition might also be written to continue to support non-residential Childcare use as an accessory or ancillary use to residential or other institutional uses (such as co-located with schools and churches in residential zones).
- Updating childcare parking requirements: Staff are working to update childcare parking requirements (including adjusting the number of parking spaces required for pick-up drop off), and potentially moving the childcare parking requirements from the Childcare Design Guidelines fully into the Parking Bylaw. The end goal will be to provide applicants with more clarity and consistency regarding parking requirements for childcare.
- Streamline permit requirements: Staff are reviewing the childcare permit conditions with the goal of reducing, eliminating or clarifying requirements.
- Harmonize childcare design guidelines: Staff are working closely with the Ministry of Education and Child Care to align Vancouver's guidelines with BC's impending design guidelines.

Additionally, staff will continue to monitor and respond to incoming queries related to the issues outlined in this memo.

FINAL REMARKS

If Council requires further information in Sandra Singh's absence, please feel free to contact me directly at branislav.henselmann@vancouver.ca and we will provide response through the weekly Council Q&A.



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APPENDIX A: Overview of Childcare Regulations and Guidelines

The BC Childcare Licensing Regulations fall under the Community Care and Assisted Living act. These are mandatory Provincial requirements enforced by Community Care Facility Licensing Officers, that set out basic criteria to ensure health and life safety for childcare operators and children under their care. These criteria include supervision ratios and mandatory qualifications for staff, activity area requirements (3.7sqm/child indoors, excluding hallways and circulation), as well as additional functional requirements which are required, but not included in the baseline 3.7 sqm/child, such as washrooms, cubbies and nap rooms to accommodate needs based on children's age and program size, kitchens, laundry and staff spaces. Outdoor area requirements are 6sqm/child, excluding area taken up by equipment, fall zones, circulation, etc. While Vancouver has worked with Licensing Officers to ensure early commentary throughout the City's development process, a childcare facility may only be receive a Childcare license and confirmation of childcare space capacity after a facility is built and furniture is in place.

The Zoning and Development Bylaw, Parking Bylaw, Vancouver Building Bylaw are all mandatory municipal regulations that apply to all permit applications in Vancouver.

The Zoning Bylaw defines childcare as: *The use of premises to provide care, supervision, social or educational training to children as defined by the Community Care and Assisted Living Act (British Columbia) and the Child Care Licensing Regulation made pursuant to that Act, including but not limited to group daycare, preschool, special needs day care, out of school care, emergency care, child minding or overnight care, but does not include the provision of licensed care in premises where up to 8 children are cared for.*

The Vancouver Childcare Design Guidelines are provided by City staff to give guidance for all new childcare applications in preparation for Provincial Licensing review at Occupancy. Guidelines include recommendations for siting and planning, as well as recommended room sizes to accommodate all functional uses required by the Provincial Childcare Regulations, such as activity areas, nap rooms, kitchens, washrooms, circulation, etc. Childcare Design Guideline area recommendations typically fall within 15% of the activity and functional area requirements outlined in the Provincial Regulations.

The draft BC Childcare Facility Design Standards are meant to play a similar role to the Vancouver Childcare Design Guidelines and Childcare Technical Guidelines – to operationalize Licensing regulations for all required spaces, and to provide additional standards to ensure functionality, durability, and better ability to perform supervision of children in childcare facilities.

APPENDIX B: Councillor Questions and Answers

What is the background rationale for our parking regulations? Is this a legacy from when childcare facilities were located in commercial zoned areas? (Cllr. Klassen)

- The Vancouver Parking By-law references the COV Childcare Design Guidelines as holding the requirements for childcare facilities. The Childcare Design Guidelines specify 1 on-site parking space (for pick-up/drop-off) per 8 childcare spaces, as well as 2 staff parking spaces per facility.
- City of Vancouver childcare parking requirements are commensurate with other local jurisdictions that regulate parking requirements for childcare.
- Being situated in the COV Childcare Design Guidelines, the parking requirements have a level of flexibility, and staff regularly support exemptions. However, some on-site parking for childcare pick-up and drop-off is essential to address concerns, accessibility, children's safety, and overall impact on the surrounding neighbourhood.
- Staff are currently working with Engineering and DBL to update and streamline childcare parking regulations within the Vancouver Parking Bylaw to provide better clarity and consistency to applicants. Attempts will also be made to ensure that the Parking requirements can be applied to ensure a balance of success for applicants and community safety.

Will the provincial guidelines impact City policies, such as parking, so that applications like this one will be approved in the future? (consolidated and paraphrased from Cllr. Klassen)

- The Parking Bylaw is under municipal jurisdiction. While the Provincial Childcare Design Standards may mention good practices in planning for parking, pickup and drop off for childcare, these Standards will be recommended to all cities, towns and villages in BC. The Province generally leaves specific requirements up to each local government.

Could this application to change the use of this building to operate 16 childcare spaces be approved if the City's regulations were aligned with Provincial regulations (current and any new regulations the province is contemplating)?

- Zoning and Development Bylaw is under municipal jurisdiction. While the upcoming BC Childcare Facility Design document may provide advice on best practices for land use planning for childcare, neither the BC Childcare Licensing Regulations, nor the upcoming BC Childcare Facility Design Standards will provide regulatory direction on land use.

Is it your sense that the Provincial harmonization will impact the policies (like parking) substantively so that a repeat of the Douglas Park cases won't happen again?

- Parking falls outside of Provincial scope, and will not be addressed in detail through the BC Childcare Facility Design Standards.
- Early drafts of the BC Childcare Facility Standards that were shared at stakeholder consultations in June 2023 indicate that the Provincial Standards will likely be very similar to the current Vancouver Childcare Design Guidelines. These Design Standards will be put forward for initial Provincial approval in Fall 2023, and if approved, are scheduled to be implemented in Spring 2024.

Would it be possible to get a list of all the upcoming applications of a similar nature? (Cllr. Dominato)

As of August 22, 2023, there are three development permits under review for new childcare spaces for 0–5-year-olds in Residential zones, proposing a combined total of 50 new spaces.

Note that actual licensed capacity for a childcare may change between enquiry/application and opening, due to City zoning, development and building requirements and guidelines applicable to all childcare and non-childcare permit applications, as well as Childcare Licensing mandatory regulations and Provincial Building Bylaw requirements.

Could you please advise what mechanisms exist to appeal a Board of Variance decision? Does Council have any role in this process? (Cllr. Klassen)

A memo from Legal Services is forthcoming.

Further to Cllr. Klassen’s question, would it be possible for staff to identify the regulatory barriers to approving such an application and what regulatory changes would be necessary to approve future applications of a similar nature. Given we have a childcare shortage, it would be helpful to understand what relaxations are necessary and could be directed by Council. (Cllr. Dominato)

While the Vancouver Sun opinion article focused on neighbourhood complaints, staff’s primary concern was for the implications of non-compliance with the intent of the residential zone, which is to retain primary residential use.

Staff are currently working to update and clarify the childcare definition in the Zoning and Development By-law, and to make changes to R zones that would clarify the intent of allowing childcare use in these zones.

- i) What parking requirements are necessary for a daycare like this?**
- ii) What policies are in place or need to change that could enable modest daycare expansions in zoned areas like this, in particular adjacent to parks, where the obvious need for accessible outdoor space is being met per VCH and City daycare requirements?**
- iii) Will upcoming report back on harmonizing provincial and city policies for childcare address opportunities like this? (Cllr. Fry)**

- i) The Vancouver Parking By-law refers to the Vancouver Childcare Design Guidelines for parking guidance. Childcare parking are as follows:
 - (a) One (1) parking stall for every eight (8) full-time equivalent childcare spaces
 - (b) Two (2) parking stalls for staff
- ii) The Guidelines specifically note that “Where childcare facilities are located in a school or other community facility, drop-off parking may be combined with that of the school/facility provided that the needs of both are adequately met.” Capacity is determined in conversation with staff responsible for those facilities.

The requirement for staff parking is frequently waived in residential zones if those needs can be accommodated by street parking. Pickup and drop off requirements may also be reconsidered, but with more caution, as children under 5 are vulnerable and less mobile users, and require additional safety and supervision considerations, including additional time allotment for pickup and drop off in comparison to older, school-age children, safety from vehicular traffic (e.g. crossing busy drive aisles or arterials). Consideration is frequently made for locations that are easily accessible by transit, biking and walking routes.

- iii) Parking requirements are regulations under municipal jurisdiction. City staff in ACCS, Engineering and Planning are currently working to update and move the parking guidelines into the Vancouver Parking By-law in order to provide more consistency and predictability to Applicants. While the upcoming Provincial Childcare Design Standards may speak to parking in general terms (regarding need, siting, planning, etc.), those Standards are meant to apply to all villages, towns and cities in BC. Specific requirements will be left to local government to determine for their own local contexts.

I'm also curious to know whether Dan Fumano (author of opinion pieces) reached out to the City for accurate background information as noted above before posting his story?

Staff provided the following response from the Board of Variance:

The Board of Variance disallowed the appeal and voted in support of the City's decision and voted against the proposal 16-children day care at 845 West 20th Avenue. The Board voted against the appeal based on zoning non-compliance issues (parking shortfall, drop-off times and strong opposition for the neighbourhood). As the appellant may come back to the Board of Variance after another permit application, and therefore, the Board of Variance cannot comment further on this case file.

APPENDIX C: Jurisdictional Scan

A preliminary jurisdictional scan showed that in 20 out of 21 Metro Vancouver municipalities (all but West Vancouver), childcare use is not permitted as a primary or principal use in residential zones, but must be considered an accessory or ancillary use to a primary residential function. In those municipalities, a proposal such as that of Douglas Academy (845 W 20th) would require the property to be rezoned for change of use.

Further, all jurisdictions in the region have parking requirements for childcare facilities, and more than half (at least 11) limit the maximum capacity of childcare facilities in residential zones to 8 spaces or fewer. As with Vancouver, this delineation of 8 or fewer childcare spaces coincides with the capacity designation for home-based childcares with an operator living in the unit.

| | # of childcare spaces allowed as an accessory/ancillary use in R-zones, where specified* |
|--|--|
| Burnaby | 8 |
| Coquitlam | 8 |
| Delta | 8 |
| Langley City | 8 |
| Langley Township | 8 |
| Maple Ridge | 12 |
| New Westminster | 8 |
| North Vancouver City | 16 |
| Pitt Meadows | 8 |
| Port Coquitlam | 25 |
| Port Moody | 10 |
| Richmond | 10 |
| Surrey | 8 |
| White Rock | 8 |
| Anmore | 7 |
| Belcarra | 7 |
| | |
| *Metro Vancouver local authorities excluded from this list: Bowen Island, Electoral Area A (including UBC & UEL), District of North Vancouver, Lion's Bay, Tsawwassen, Vancouver, and West Vancouver | |