

TOWN OF LITTLE ELM

ORDINANCE NO. 901

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS AMENDING THE CODE OF ORDINANCES OF THE TOWN BY AMENDING SECTION 106-6 "USE OF LAND AND BUILDINGS" TO EXPAND CHILD CARE USES AND TO CLARIFY OTHER USES; BY AMENDING SECTION 106-7 "SPECIAL DEFINITIONS AND EXPLANATIONS NOTED IN USE REGULATIONS" TO DISTINGUISH AND DEFINE CHILD CARE CENTER USES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code; and

WHEREAS, the Town Council of the Town of Little Elm Texas, has determined that it would be in the interest of public health, safety and welfare to amend the Comprehensive Zoning Ordinance of the Town, as amended, to update land use regulations, relating to Child Care Center uses, of the Zoning Ordinance; and

WHEREAS, the Town Council and the Planning and Zoning Commission, in accordance with state law and the applicable ordinances of the Town, have given the required notices and held the required public hearings regarding the amendments and regulations contained in this Ordinance; and

WHEREAS, after public notice was given and a public hearing was conducted, and after due deliberations and consideration of the recommendation of the Planning and Zoning Commission and any other information and materials received at the public hearing, the Town Council has determined that the amendments set forth herein should be adopted, and that such amendments are in the best interest of the public health, safety, and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all

purposes.

Section 2. Amendment. That Chapter 106, Section 106-6 of the Code of Ordinances of the Town of Little Elm, Texas, is hereby amended, in part, to read as follows:

1. Section 106-6 Exhibit "A" (Use Chart) of Chapter 106 (Zoning) of the Code is hereby amended, in part, by amending the Educational, Institutional, and Special Uses chart as follows:

"EDUCATIONAL, INSTITUTIONAL, AND SPECIAL USES

Type of use districts	NOTE	A G	A1	A2	A- RE	M H1	M F1	M F2	PH	M H2	PK0	NSR	LC	CB	H C	LI1	LI2	HI	CE	CB I	R H	SF 1	SF 2	SF 3	SF 4
Child Care Center	11	S	N	N	N	N	N	S	N	N	N	S	S	S	N	S	S	S	S	N	N	N	N	N	N

Type of use districts	NOTE	A G	A1	A2	A- RE	M H1	M F1	M F2	PH	M H2	PK0	NSR	LC	CB	H C	LI1	LI2	HI	CE	CB I	R H	SF 1	SF 2	SF 3	SF 4
Child Care Center, In-Home	74	C	C	C	C	C	C	C	C	C	N	C	C	C	N	N	N	N	N	C	N	N	C	C	C

2. Section 106-6 Exhibit "A" (Use Chart) of Chapter 106 (Zoning) of the Code is hereby amended, in part, by amending the Accessory and Incidental Uses chart as follows:

"ACCESSORY AND INCIDENTAL USES

Type of use districts	NOTE	A G	A1	A2	A- RE	M H1	M F1	M F2	PH	M H2	PK0	NSR	LC	CB	H C	LI1	LI2	HI	CE	CB I	R H	SF 1	SF 2	SF 3	SF 4
Home Occupation		C	C	C	C	C	C	C	C	C	N	N	N	N	N	N	N	N	N	N	N	C	C	C	C

Section 3. Amendment. That Chapter 106, Section 106-7 of the Code of Ordinances of the Town of Little Elm, Texas, is hereby amended, in part, to read as follows:

1. Section 106-7 (Special Definitions) of Chapter 106 (Zoning) of the Code is hereby amended, in part, by adding the following definitions so that it shall hereafter read as follows:

Child Care Center. A facility that is licensed to care for any number of children for less than 24 hours per day, at a location other than the permit holder's primary residence. A specific use permit, containing an attached site plan and current State permit, is subject to review and approval by the Planning and Zoning Commission and Town Council. Regulations shall not apply to *Child Care Center, Incidental*, as defined in Chapter 106-7 of the Code of Ordinances.

Child Care Center, In-Home. A home occupation that provides regular child care for compensation in their primary residence for less than 24 hours a day. It is considered a violation of this ordinance for a facility to provide care for a number of children that exceeds what is allowed per the classification shown on the State permit to be submitted with the Town's Home Occupation registration. Uses must register with the Town annually and show proof of State permit. This use is subject to regulation by the Texas Department of Family and Protective Services and all Home Occupation regulations as stated in Section 106-36 (Supplementary District Regulations) of the Town of Little Elm Code of Ordinances.

Child Care Center, Incidental. A place designed solely for the care of children belonging to employees and/or patrons of the primary use. The center shall be completely contained within the primary use and shall not constitute more than fifteen percent (15%) of the main use. The operating hours of the center shall be the same as the primary use and shall not include overnight lodging, medical treatment, counseling, or rehabilitation services. This use may be subject to regulation by the Texas Department of Family and Protective Services.

Section 4. Savings. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

Section 5. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the

remaining portions of this Ordinance, and the Town Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. Penalty Clause. Any person violating the provisions of this Ordinance shall upon conviction, be subject to a fine not to exceed the sum of two-thousand dollars (\$2000) and that each day in violation shall constitute a separate offense.

Section 7. Effective Date. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas, this the 1st day of July, 2008.




Frank Kastner, Mayor
Town of Little Elm, Texas

ATTEST:


Kathy Phillips, Town Secretary

APPROVED AS TO FORM:


Robert Brown, Town Attorney

TOWN OF LITTLE ELM

Town Council

AGENDA INFORMATION SHEET



PROJECT: Home Based Child Care

HEARING DATES: Planning Commission: 6/05/08 Work Session: 4/01/08
Town Council: 6/17/08
7/01/08

REQUEST: Amend the Zoning Ordinance as it relates to Home Based Child Care

PLANNING ANALYSIS: In April 2008, Town Council received public input concerning the number of children that are allowed to be cared for in a home based child care. The Town's Zoning Ordinance allows a "child care center" to operate in a residential area, but only with an SUP approved by Town Council. According to this definition a facility that cares for four or more children is a Child Care Center and requires an SUP. (See definition below)

Zoning Ordinance, Sec. 106-7. Special definitions.

11 *Child care center.* A facility providing care, training, education, custody, treatment or supervision for **four or more children** for all or part of the 24-hour day.

Therefore, only home based child care centers that cared for 3 or fewer children can operate without an SUP under the existing standard.

Council directed staff to revise the definition of a "Child Care Center" to a larger number of children, matching the State's definition and to include a separate definition for a "Child Care Center, In Home". This would allow home based child care centers that cared for the number allowed by the State to fall under the rules of a home occupation in regards to signs, traffic and impacts to surrounding houses.

3 child care center definitions are proposed including:

Child Care Center- a commercial child care facility controlled by the State and requiring an SUP.

Child Care Center, In Home- a home occupation and follows the State thresholds for a Home Based Child Care.

Child Care Center, Incidental- an incidental use for employees and/or patrons such as 24 Hour Fitness.

Regardless of any change to the Zoning Ordinance, all centers must still register with the State. In order to ensure that home based child

care centers have all required State certifications, they are required to show proof of permit to the Town. No Town inspections would be performed and no fees would be collected.

The Planning and Zoning Commission held a public hearing at their June 5, 2008 meeting and recommended approval unanimously.

**RECOMMENDED
ACTION:**

Staff recommends approval of the attached ordinance.

TOWN CONTACT:

John Taylor, Director of Planning and Development
Dusty McAfee, Senior Planner

ATTACHMENTS:

Proposed Ordinance