

Date: March 6, 2024
To: HB 2727 Work Group
From: DLCD; ECONW
Subject: HB 2727 Child Care Barriers: National Practices for Work Group Meeting #1

Child Care Expansion Work Across the U.S.

HB 2727 requires research on promising local, state and national standards across the U.S. for promoting the expansion of early childhood and education (ECE) facilities. In addition to the memo summarizing the regulatory context for ECE facilities in Oregon, this memo outlines some examples of jurisdictions across the U.S. addressing the childcare gap by lowering barriers to the development process.

Generally, many other states and local jurisdictions have approached expanding ECE facilities through zoning and land use reform similar to Oregon's HB 3109, including provider capacity increases through codified definitions, and easing or eliminating requirements for parking or building size requirements. Some jurisdictions have also considered development incentives that can benefit ECE providers, including requiring developers to include space for childcare in new buildings, establishing city funding sources for development, and expediting permitting allowances.

State-Wide Reforms

In recent years, some states have enacted state-wide laws limiting local jurisdiction's influence over zoning and building codes, specifically for home-based providers. Examples include:

Oklahoma: In 2023, Oklahoma approved HB 2452, which prevents local authorities from enacting regulatory requirements greater than those established by the Department of Human Services for family child care home licensees.¹

California: In response to an "extreme shortage" of regulated family daycare homes, the 2005 California Child Day Care Facilities Act established a sitewide system for licensing childcare and prohibited local regulation of small and large family childcare homes.² The Act also supersedes local zoning, building and fire codes that conflict with its provisions.

Colorado: In 2021, Colorado passed HB 1222 which requires local governments to treat licensed home-based child care providers as residences for the purposes of local zoning, land use, and fire safety decisions.³ Previously, some cities and counties treated these home-based providers as commercial businesses, leading to higher zoning and building code requirements (such as

¹ Oklahoma [House Bill No. 2452 \(2023\)](#)

² California Health and Safety Code [HSC 1597.30](#)

³ Colorado [House Bill 21-1222](#) (2021)

sprinkler systems or expensive renovations). The bill also required local jurisdictions to align with state regulations for maximum number of enrollees (nine), rather than setting local limits.

Oregon: In addition to HB 3109, which is summarized in the companion Background Memo for HB 2727, Oregon created the Climate Friendly and Equitable Communities (CFEC) program in 2023 (effective January 2023) that aims to reduce climate pollution, provide more transportation and housing choices, and promote equitable land use planning outcomes. Among many new rules, the program reduces or eliminates parking requirements for certain new developments in urban metropolitan areas, including child care uses.⁴

Bend, Oregon: Fee Reductions

In 2020, in response to a severe shortage of child care spaces throughout Deschutes County that worsened as the COVID-19 pandemic unfolded, Bend exempted new or expanding day care facilities from transportation system development charges (SDCs) that posed a significant financial barrier for providers looking to open or expand of child care facilities in Bend. The program automatically sunset at the end of 2022 but was extended to the end of 2024 in order to keep it available while the city conducts an update to their SDC methodology.

Under the new methodology, it is proposed that all Sewer, Water and Transportation SDCs will be exempt for childcare facilities.

Austin, Texas: Land Use Reforms

In 2018, the Austin City Council approved a resolution to evaluate fee and zoning regulations for ECE facilities (referring to both home- and center-based care). Following an evaluation by the City Manager's office, the Austin City Council approved an ordinance to update land use allowances for ECE facilities in 2023.⁵ Major changes included:

- ◆ Allowing Limited and General facilities as permitted uses in all areas identified as childcare deserts, as well as all zones where they were previously designated as conditional use.
- ◆ Allowing Limited and General facilities as conditional uses in areas where they were previously not allowed.
- ◆ Allowing Limited facilities as an accessory use in all residential zones.
- ◆ Updating enrollee limits and definitions of different type of ECE facilities such that:
 - State regulations allow home-based providers to serve up to 12 children; staff recommended allowing "Limited" facilities to serve up to 12 children so that all home ECE providers fall in the same category.

⁴ Oregon Department of Land Conservation and Development, [Climate Friendly and Equitable Communities Rulemaking Adoption](#) (2023)

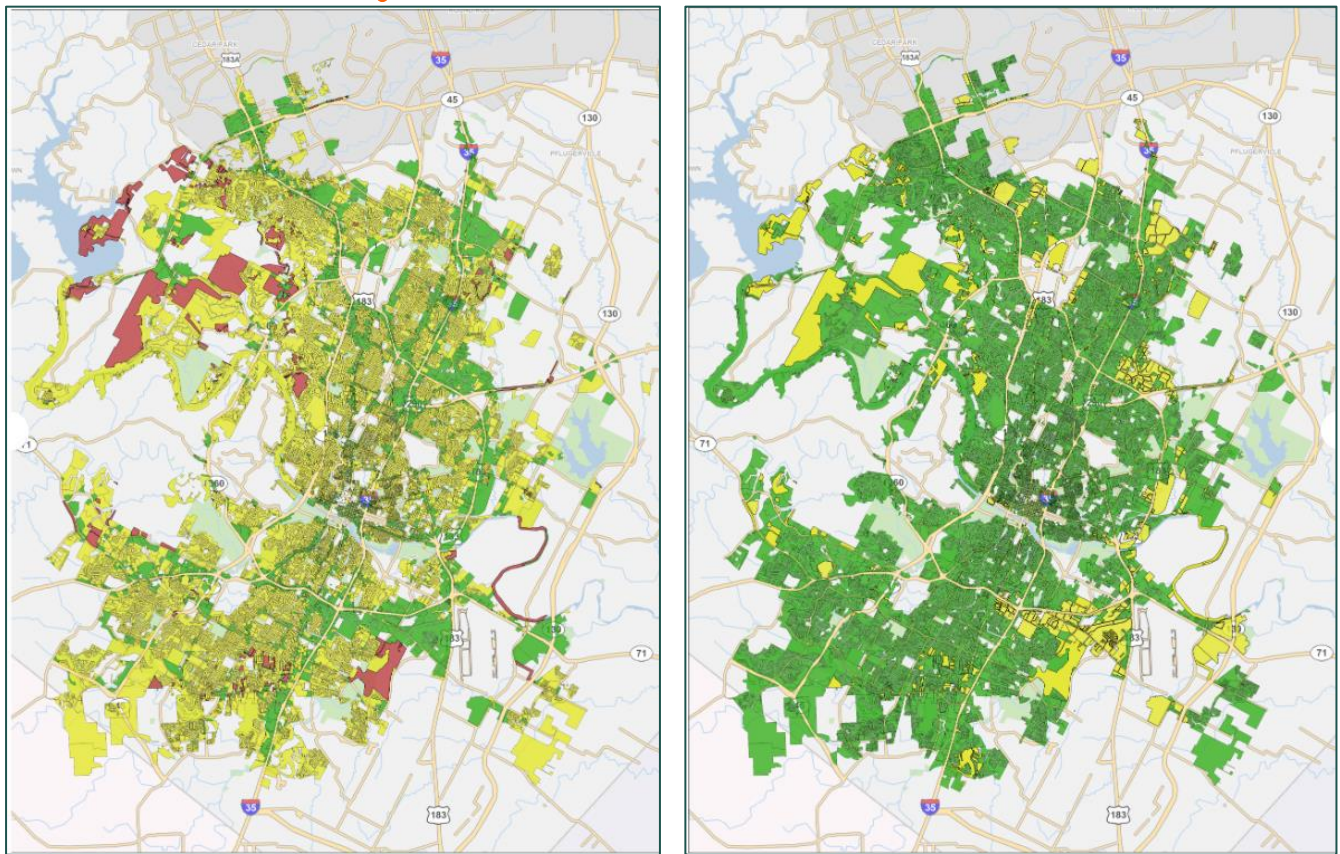
⁵ City of Austin, [Ordinance NO. 20231019-052](#) (2023)



- Allow "General" centers to serve up to 24 children to allow mid-size facilities to serve more children without being categorized as a commercial center, which would necessitate a conditional use permit.
- ◆ In a separate ordinance, the Council eliminated minimum parking requirements across the city for all uses, including childcare.

Overall, the new regulations increased available space for ECE facilities by about 77,000 acres, or more than 250%. Of this area, roughly 60,000 acres are located in childcare deserts. Below, Exhibit 1 shows childcare allowances prior to the ordinance (left) compared to after (right).⁶ Areas where childcare centers are permitted are shown in green, areas requiring a conditional use permit are shown in yellow, and areas where childcare was previously prohibited are in red.

Exhibit 1: Austin Land Use Changes, 2023



New Orleans, Louisiana: Land Use Reforms

In 2020, New Orleans City Council passed an ordinance amending the use permissions and standards for child daycares in non-residential districts, including reducing conditional use requirements and establishing by-right designations in many districts. The Council also updated its definitions to allow "Small" childcare centers to enroll up to 50 children, and "Large" childcare

⁶ Community Impact, [Child Care Center Now Allowed in More Places Across Austin](#) (2023)



centers to enroll 51 or more; "Small" *home-based* providers to enroll up to six children, and "Large" home-based providers to allow seven or more.⁷

In 2022, New Orleans voters approved a property tax measure to create an estimated 1,000 new childcare slots for low-income children under four. However, while increase funding resulted in an increase in demand for ECE centers, providers continued to face barriers to establishing or expanding their facilities including conditional use process requirements, long timelines, and overly prescriptive use standards. Acknowledging these barriers, in November 2023 the City Council directed the Planning Commission to look into addressing regulatory and administrative barriers facing ECE providers, streamlining the zoning approval process, and expediting the expansion of ECE facilities.⁸ Proposed amendments included:

- ◆ Updating use permissions to allow childcare centers as permitted uses in additional residential and non-residential zoning districts, as well as permitted accessory uses for all institutional uses.
- ◆ Modifying non-conforming use regulations to permit under-utilized school buildings to be converted to childcare centers without conditional use approval.
- ◆ Considering creating a single "childcare center" use standard, without "Small" and "Large" designations.
- ◆ Modifying or reducing use standards and parking requirements for childcare centers.
- ◆ Reducing lot size setback and bulk and yard requirements for childcare centers in residential zoning districts.

Planning Commission is expected to release its recommendations in early 2024.

Santa Monica, California: Childcare Linkage Fees

Since 2003, the city of Santa Monica has charged developers of commercial and multi-family residential projects over 7,500 square feet a Childcare Linkage Fee to offset increased demand for childcare. For commercial projects, the fee ranges from \$2.64 to \$5.27 per-square-foot based on project type; residential projects are charged \$111 per unit. Alternatively, developers can opt to construct or rehabilitate ECE facilities directly if they provide documentation that the project "bears a reasonable relation to the fee".⁹ Proceeds from the fee are kept in a Child Care Linkage Fee Reserve Account and can be used for city childcare development costs, low-interest loans, or grants to ECE providers for facility development or improvement. Using these funds, the city spent roughly \$4.8 million on development of the Santa Monica Early Childhood

⁷ City of New Orleans [Ordinance No. 28432](#), Mayor Council Series (2020)

⁸ New Orleans City Council [Motion No. M-23-525](#) (2023)

⁹ City of Santa Monica Planning and Zoning Code [9.65.040](#)



Lab School (62% of total project costs).¹⁰ This project provided 110 childcare slots, of which 30% are reserved for Santa Monica residents and 15% are reserved for low-income residents.¹¹

Boston, Massachusetts: Inclusionary Childcare Policies

First passed in the Midtown Cultural District in 1989, the “Inclusion of Day Care Facilities” (IDF) regulation requires that buildings above a certain threshold of floor space must either set aside a portion for center-based ECE facilities, either on- or off-site. The ordinance applies to proposed projects with a height above 125 feet or a floor area ratio (FAR) of eight.¹²

- ◆ Qualifying projects between 100,000 and 200,000 square feet must devote at least 2% of the project’s gross floor area to ECE facilities.
- ◆ Qualifying projects between 200,00 and 500,000 square feet must provide at least 4,000 square feet to ECE facilities.
- ◆ Qualifying projects between 500,000 and 1,000,000 square feet must provide at least 8,000 square feet to ECE facilities.
- ◆ Qualifying projects above 1,000,000 square feet must provide at least 12,000 square feet to ECE facilities.

The IDF ordinance is currently active in 15 zones in Boston’s downtown area. However, a 2020 study found of the 13 impacted developments, there has been significant variance in compliance without much documentation.¹³ Of the 13 developments, four had no mention of childcare or IDF in their public documents, three had development agreements that removed the childcare requirement, four projects paid a fee-in-lieu, and three projects provided physical childcare space. In part, the study recommended better transparency and tracking mechanisms for both the public and city staff to better understand the impact of the ordinance.

Considerations

Common themes and considerations from the case studies above include:

- ◆ **Jurisdictions:** Assess whether local jurisdictions are in alignment with state policies; if there are many discrepancies, consider passing stronger legislation at the state level to supersede local regulations.
- ◆ **Land use:** Several jurisdictions have addressed ECE shortages by expanding where facilities are allowed. While Oregon has taken similar steps with HB 3109, there could potentially be additional steps taken to simplify and streamline current land use

¹⁰ City of Santa Monica [Development Impact Fees Report](#) (2021)

¹¹ Santa Monica Early Childhood Lab School [Frequently Asked Questions](#)

¹² Boston Zoning Code [Section 38-18](#)

¹³ Tufts University and Community Labor United, [Cracking the Code: How Boston is Trying to Address Child Care Through Zoning](#) (2020)



pathways for early childcare uses if land use permitting requirements are found to be a major barrier.

- ◆ **Definitions:** Ensure that local and state zoning requirements and state ECE licensing requirements are in alignment on different types of facilities and their definitions.
- ◆ **Zoning requirements:** Consider reducing zoning code requirements, such parking, circulation, or lot size requirements, to reduce costs and increase feasibility for ECE facilities.
- ◆ **Market rate development:** Consider requiring or incentivizing other residential or commercial developers to include support for ECE facilities through market rate development.

