YOUR RIGHTS AS A HOMEOWNER OR TENANT TO OPERATE A FAMILY CHILD CARE BUSINESS

You may face resistance from neighbors, your home owners’ association or your landlord if you decide to run a family child care business from your home. This handout provides answers to questions that you, as a child care provider, may have regarding operating a family child care home.

PROHIBITIONS OR RESTRICTIONS ON CHILD CARE BUSINESSES

1. Am I allowed to operate a family child care business despite Homeowners Association, rental agreement or deed restrictions?

**YES.** Any deed restriction, Covenants, Conditions & Restrictions clause or term in a rental lease agreement that prohibits you directly or indirectly from using your property to run a family child care home is not valid under California State law. Any prohibition against “business or professional” uses is also void when the business is a family child care home. The California Legislature has determined that family child care is a residential use, not a business use, of residential property. Therefore a licensed provider has the legal right to operate a family child care home in a residential property.

2. Is there a need to obtain a city permit to operate a small family day care home?

**NO.** There are two types of family child care homes: a “Small Family Child Care Home” and a “Large Family Child Care Home.” A Small Family Child Care Home is defined as a home that provides family child care for up to 8 children. A Large Family Child Care Home is defined as a home that provides family child care for up to 14 children. Different factors regulate the number of children a provider can care for during a given time in a family child care home. No permits are required by California State law to operate a small family child care home.

3. Is there a need to obtain a city permit to operate a large family day care home?

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1 See California Health & Safety Code § 1597.40.

2 See California Health & Safety Code § 1597.45(b).
IT DEPENDS. Cities can require a permit to operate a large family day care home and may require you to comply with certain local ordinances related to things such as parking and noise control. Also, be sure to verify zoning requirements with your city, or county (if you are in an unincorporated area) by calling the planning department or checking online.

4. If I’m a tenant, must I give my landlord notice that I plan to operate a family child care home in my rental property?

YES. California State law requires existing and prospective family child care providers to give their landlords a 30-day written notice if they have opened or intend to open a family child care home. The notice requirements differ based on each provider’s particular situation:

a) If a tenant plans to open a family child care home, the tenant must provide the landlord with written notice 30 days prior to opening the family child care home. The law does not require the tenant to give the landlord written notice before signing the lease.

b) If a tenant is relocating an existing family child care home to another rental property, the tenant must give the landlord 30 days written notice prior to reopening the home at the new location.

Furthermore, if a small family child care provider later obtains a license to become a large family child care provider, he/she is not required to ask for permission from the landlord to increase capacity to care for 12 children.

5. If I’m a tenant, must I get permission from my landlord to open a family child care home in my rental property?

IT DEPENDS. Written consent by a landlord is required when tenants who are licensed to run a family child care home decide to increase the number of children that they care for, as set out below:

a) you run a small family child care home and decide to care for more than 6 children (and up to 8 children); OR

b) you run a large family child care home and decide to care for more than 12 children (and up to 14 children).

In other words, permission from the landlord is required if a small family child care licensee wants to care for 7 or 8 children or a large family child care licensee wants to care for 13 or 14 children. Under such circumstances, the increase in capacity would require the landlord’s written consent.

6. Can a landlord increase my rent because I operate a licensed family child care home?

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See California Health & Safety Code § 1597.46.
See California Health & Safety Code § 1597.44.
**NO.** It is illegal for a landlord to raise the rent solely because a tenant is operating a family child care home. Such increases constitute “source of income” discrimination and are violations of California’s Fair Housing and Employment Act.\(^7\) Such increases may also violate fair housing laws by creating a negative disparate impact on women and families.\(^8\) Furthermore, a landlord may not raise a provider’s rent in retaliation of the provider’s exercise of their legal rights.\(^9\)

7. **Can a landlord ask me to pay a higher security deposit because I operate a licensed family child care home?**

**YES.** A landlord may have a genuine concern that more children in the rental property will lead to more wear and tear. A landlord may therefore require that you pay an increased security deposit for operation of the family child care home. The increase in deposit may be required even though other tenants that do not run family child care businesses pay a lesser amount. California State law provides that the maximum amount of any security deposit that can be required from you is an amount equal to either a) two months' rent for an unfurnished property, or 2) three months' rent for a furnished property.\(^10\)

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**INSURANCE**

1. **Am I required to obtain insurance?**

WE STRONGLY RECOMMEND OBTAINING INSURANCE. California State licensing laws do not require a licensee to obtain liability insurance for their family child care business. Rather, the licensee has the choice of purchasing an insurance policy, obtaining a bond, or having the parents of the children they care for sign affidavits stating that they know the licensee does not have insurance and that the landlord’s insurance policy may not cover any accidents that might occur in your family child care home.\(^11\)

However, it is highly recommended that you obtain insurance. You should understand that obtaining written affidavits from parents of children enrolled in your child care home does not protect you from being sued by them. The parents’ affidavits merely acknowledge that you do not carry liability insurance. Although the law does not require licensee to obtain insurance, Public Counsel strongly recommends that you purchase insurance to protect yourself and your business. For more information, please read the ECE Law Project’s handout entitled “Child Care Liability Insurance.”

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\(^7\) California Government Code § 12955. “Source of income” is defined as “lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant;” licensed family child care is a lawful source of income because it is paid directly to the child care provider in exchange for her care of children.

\(^8\) California Government Code § 12955.

\(^9\) California Civil Code § 1942.5(c).

\(^10\) California Civil Code § 1950.5(c).

2. Does my homeowner’s insurance cover me as a family child care provider?

PROBABLY NOT. It is unlikely that you will be covered by your homeowner’s insurance policy. Unless you have contacted your insurance company and requested a separate “rider” or “endorsement” to your insurance policy covering your family child care business, you are probably not covered. However, California State law does not require that an insurance company provide coverage for the family child care activities. If you have a homeowner’s insurance policy, contact the insurance company to learn exactly what you are covered for.

SIGNAGE

1. Can local public entities place restrictions on signage?

IT DEPENDS. While local public entities cannot prohibit you from operating a family day care in your home, they can limit signage if they apply the restriction uniformly to all residential property and not only to property where a family child care home is located.

ADDITIONAL RESOURCES

1. For further information, please refer to the California Health and Safety Code and Title 22 of the California Code of Regulations related to child care.

2. For information on rights and responsibilities of residential tenants and landlords, please refer to the California Department of Consumer Affairs California Tenants booklet, which can be found at: http://www.dca.ca.gov/publications/landlordbook/index.shtml.

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12 California Insurance Code § 676.1.
13 California Health and Safety Code § 1597.47.