



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**February 27, 2020**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider a recommendation from the Planning Commission to adopt an ordinance amending Appendix B-Zoning of the City Code relating to "Children's Homes."

**SUMMARY RECOMMENDATION** Accept the Planning Commission's Recommendation.

**BACKGROUND** On February 4, 2020 the Planning Commission conducted a public hearing amending Appendix B-Zoning of the City Code relating to "Children's Homes." The following motion was approved:

To recommend that the City Commission approve adding "Children's Homes" into the permitted and conditional use table as a permitted use in an R-5 zone, and a conditional use in the R-3 and R-4 zones with the following determinations:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the R-3 and R-4 zones which will allow children's homes with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is made necessary because of new planning concepts in the R-3 and R-4 zones as it relates to a shortage of available foster care for children.

To recommend that the City Commission add the following definitions to Article IV. Rules and Definitions:

Children's Home: Any place, home or institution providing twenty-four hour nonsecure care licensed by the state for five or more children under the age of 18 years for compensation in which such children are under the custody of a state agency; provided, however, this definition shall not include children placed in family care in a family foster home, public and private schools organized, operated or approved under the laws of the state, children related by blood or marriage to the provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.

Family Foster Home: A childcare facility that is a private residence, including any adjacent grounds, in which the resident(s) provide family care for 24 hours a day for one or more children in foster care and for which a license is required by the State of Kansas.

**BUDGET IMPACT** N/A

**SUGGESTED MOTION** I move to accept the recommendation of the Planning Commission and adopt an ordinance amending Appendix B-Zoning of the City Code relating to " Children's Homes."

**SUPPORTING DOCUMENTS**

1. Staff Report
2. Ordinance

## Planning Commission

- b. Public hearing to consider a text amendment to Appendix B-Zoning of the City Code including, but not limited to:**
- 1. Article IV. Rules and Definitions.**
  - 2. Appendix A. “Listing of Permitted and Conditional Uses” including, but not limited to “Orphanages” and other new additional use(s).**

On January 7, 2020 the Planning Commission initiated a public hearing to consider a text amendment that would add “*Children’s Home*” into the permitted and conditional use table which would be a permitted use in an R-5 zone, and a conditional use in the R-3 and R-4 Zones.

As stated in the staff report from your last meeting, this request was initiated by someone wishing to open a “Group Boarding Home” as defined by DCF which means “*Twenty-four hour nonsecure care for five to ten children between the ages of infancy to 16 years of age.*” The individual that contacted staff indicated that they would have five to eight children in foster care ranging in ages from 8 to 18 years of age. Staff found on another DCF document that “*Facilities providing services to children age 16 and older only do not require a license*” so I anticipate that is why the previous DCF definition only addresses children 16 and younger. The individual stated they will have an in-house manager and that the requestor will not live in the house.

City code 1604.2 provides the following regarding text amendments:

*1604.1. Recommendations:* Upon the conclusion of the public hearing the planning commission shall prepare and adopt its recommendations and shall submit the same, together with a record of the hearing thereon, to the governing body. Said recommendation may be for approval, disapproval or approval in part and reasons for the recommendations shall be included as appropriate.

*1604.2. Amendments to text:* When a proposed amendment would result in a change in the text of these regulations but would not result in a change of zoning classification of any specific property, the recommendation of the planning commission shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items:

- Whether such change is consistent with the intent and purpose of these regulations;
- The areas which are most likely to be directly affected by such change and in what way they will be affected; and
- Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected.

In order to allow their request, the options are:

- Classify their requested use as an orphanage and require rezoning to R-5 which is the only permitted zoning district for an orphanage.
- Approve a text amendment to modify the permitted and conditional uses to more accurately reflect the use requested. If approved, a definition of “Children’s Home” should be added to Article IV. Rules and Definitions.

If a text amendment is ultimately approved by the Commission, it would still require the applicant to go through the conditional use permit process, which is similar to the rezoning process. The conditional use permit could address concerns such as the number of children, maximum ages, etc. The City Attorney has advised that the applicant may proceed with their request at the same meeting as the text amendment as long as the text amendment is heard before the request for rezoning and/or a conditional use permit. Therefore, the applicant did submit a rezoning application which will be considered later on this agenda.

It should be noted that staff is cognizant of the need for foster care and is also supportive of local business opportunities that will bring additional jobs to the community. The City currently requires conditional use permits for daycares, so requiring a conditional use permit and/or rezoning for the requested use would not be out of line with the current code and would ensure that our zoning codes are consistent and fair to all.

If the Planning Commission wishes to approve adding “*Children’s Home*” into the permitted and conditional use table which would be a permitted use in an R-5 zone, and a conditional use in the R-3 and R-4 zones, then it is recommended that the following determinations be included in the motion:

- a. That such change is consistent with the intent and purpose of these regulations;
- b. That the areas which are most likely to be directly affected by such change will include the R-3 and R-4 zones which will allow children’s homes with a conditional use permit which does provide an opportunity for property owners within the notification area to voice any concerns to both the Planning Commission and City Commission prior to approval;
- c. The proposed amendment is made necessary because of new planning concepts in the R-3 and R-4 zones as it relates to a shortage of available foster care for children.

In addition, if the Planning Commission wishes to approve this request, the following definitions should be added to Article IV. Rules and Definitions:

*Children’s Home: Any place, home or institution providing twenty-four hour nonsecure care licensed by the state for five or more children under the age of 18 years for compensation in which such children are under the custody of a state agency; provided, however, this definition shall not include children placed in family care in a family foster home, public and private schools organized, operated or approved under the laws of the state, children related by blood or marriage to the provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.*

*Family Foster Home: A child care facility that is a private residence, including any adjacent grounds, in which the resident(s) provide family care for 24 hours a day for one or more children in foster care and for which a license is required by the State of Kansas.*

The above definitions were written to ensure that rezoning or conditional use permits would not apply to a family that serves as foster parent(s) in the home the foster parent(s) reside in.

**Suggested Motion:**

*I move to recommend a text amendment adding “Children’s Home” into the permitted and conditional use table as a permitted use in an R-5 zone, and a conditional use in the R-3 and R-4 zones based on the determinations included in the staff report; and adding definitions for “Children’s Home” and “Family Foster Home” as prepared by staff.*

City of Independence, Kansas

**NOTICE TO THE PUBLIC**

The Independence, Kansas, Planning Commission will conduct a public hearing on:

Tuesday, February 4, 2020 at 5:30 p.m.

To receive comments to consider text amendments to Appendix B-Zoning of the City code relating to:

1. Article IV. Rules and Definitions, and
2. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Orphanages" and other new additional use(s).

**Case Number:**

2020/ZA/01

The hearing will be conducted in the Veterans Room, Memorial Hall, 410 North Pennsylvania Avenue, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend and they will be heard. Persons wishing to comment, but who cannot attend this hearing, should provide their written comments to:

Kelly Passauer  
Zoning Administrator  
811 W Laurel Street  
Independence, KS 67301  
(620) 332-2506

Information regarding this application is available in the Zoning Administrator's office. If special accommodation is required, please inform the Zoning Administrator.

Kelly Passauer, Zoning Administrator

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Setting Forth Text Amendments to the Zoning Code  
on the Subject of Children’s Homes**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Appendix B. – Zoning - Appendix A. - List of Permitted and Conditional Uses is amended as follows:

- a. “Children’s Homes” shall be added as a permitted use in the R-5 district, and a conditional use in the R-3 and R-4 districts.

**Section 2.** Appendix B. – Zoning – 403.0 – Definitions shall be amended to add the following definitions:

“Children’s Home – means any place, home or institution providing twenty-four hour nonsecure care licensed by the state for five or more children under the age of 18 years for compensation in which such children are under the custody of a state agency; provided, however, this definition shall not include children placed in family care in a family foster home, public and private schools organized, operated or approved under the laws of the state, children related by blood or marriage to the provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.”

“Family Foster Home – means a childcare facility that is a private residence, including any adjacent grounds, in which the resident(s) provide family care for 24 hours a day for one or more children in foster care and for which a license is required by the State of Kansas.”

**Section 3.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 27<sup>th</sup> day of February,  
2020.*

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LEONHARD CAFLISCH, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk