

**MINUTES OF LAYTON CITY  
COUNCIL SPECIAL WORK  
MEETING**

**SEPTEMBER 20, 2016; 7:02 P.M.**

**MAYOR AND COUNCILMEMBERS  
PRESENT:**

**MAYOR BOB STEVENSON, BRUCE DAVIS, TOM  
DAY, SCOTT FREITAG AND JOY PETRO**

**ABSENT:**

**JOYCE BROWN**

**STAFF PRESENT:**

**ALEX JENSEN, KEVIN WARD, DOUG BITTON,  
KENT ANDERSEN, WESTON APPLONIE,  
SHANNON HANSEN AND THIEDA WELLMAN**

**The meeting was held in the Council Conference Room of the Layton City Center.**

Mayor Stevenson opened the meeting and excused Councilmember Brown. He said Staff would make a presentation and those in attendance would be given time to present information. Mayor Stevenson indicated that it was important for everyone to understand the issues. He turned the time over to Staff.

**DAYCARE DISCUSSION**

Dawn Nielson with Dawn's Childcare; Ilsa Wilson, President of Family Child Care Association of Utah; and Dana Pevey and Jay Pevey with Dana's Kids Childcare were recognized.

Kent Andersen, Deputy Director of Community and Economic Development, gave the Mayor and Council a summary of the research Staff had put together relative to daycares. He indicated that the City had received a request from Dawn Nielson to amend the City's daycare ordinance.

Kent said the request asked that the ordinance be amended to allow for 16 children in the daycare and one outside of the home employee. He indicated that Staff had taken a thorough look at this request. Currently the City's ordinance allowed for 8 children with one care provider; no more than 2 children could be under the age of two. Two care providers allowed for 12 children with no more than 3 children under the age of three. No employees were allowed from outside the home, which was consistent with all home occupations. Kent indicated that the City currently had 24 licensed home daycares.

Kent indicated that the City had reviewed this ordinance several times in the past. In 1999 the ordinance was amended to mirror current State Code, but there were concerns with allowing for 16 children. After considerable input from the Fire Marshal and Fire Chief, and the State Building Commission, the ordinance was amended to its current state after review and approval by the Planning Commission and City Council.

Kent said Staff gathered information from 21 cities in the area. Most cities allowed from 8 to 16 children; most were at 12 or below.

Councilmember Petro said relative to the age limit, at what point did the daycare owner's own children not count in the total number of children.

Kent said at age 6.

Kent said some cities required a conditional use permit process for daycares. Most cities allowed for zero to one employee. He said Staff looked at this from a zoning aspect. Allowing for more than 12 children was more of a commercial use and not a residential environment. Kent mentioned the impacts of traffic and overall impacts to neighborhoods. He said daycares could go up to 16 children in a commercial zone with two caregivers; the number was higher with more caregivers. Kent asked Chief Ward to comment on evacuation in the event of an emergency.

Kevin Ward, Fire Chief, said the State rule indicated that the State Health Department was involved with inspections when there were 16 or more children, but it also indicated that there was nothing in the rule to require a jurisdiction to approve 16 clients in a daycare. Kevin said the Fire Department would advocate for a maximum of 12 children relative to emergency evacuation. He said several cities were more restrictive and only allowed for 8 children.

Alex Jensen, City Manager, said Staff felt that one person taking care of 12 or 16 children was not appropriate. He mentioned an incident in Layton several years ago where a child had died when there wasn't an appropriate span of control. Alex said the capacity of various providers was different, but the City had responsibility to balance all of those interests and do what was best for the community at large. Alex said parents thought that licensed daycares were safe. He said he felt that allowing for 12 children was fairly liberal on the high end.

Mr. Jay Pevey handed out a letter to the Council and gave a brief personal history. He said Staff had been made aware of some inconsistencies in the City's ordinance and State Code. Mr. Pevey indicated that he had participated in 1999 to rewrite the City's ordinance relative to group care. He said when the State rewrote their ordinance they allowed for up to 16 children. Mr. Pevey said the State had developed a very thorough Code with over 200 pages of requirements, including training. There were guidelines in place for the safety of children. He indicated that they had to attend a minimum of 20 hours of training a year; they were CPR certified; they had to have food handler's permits; they went through an FBI background check; and substitutes had to go through the same background checks. Mr. Pevey said they were subject to 3 yearly inspections from the State and there was an inspection every year from the local Fire Marshal. There was a kitchen inspection performed by the County Health Department. He said Code Enforcement had been to his house 2 times in 25 years. Mr. Pevey said he felt that they were very well regulated.

Mr. Pevey said a search of the internet indicated that there had been three deaths in the State since 2012 in child care facilities; two of those deaths had been in commercial centers. He said they did their best to make sure the kids were safe and they wanted to work with the City to create some flexibility within the profession.

Councilmember Petro asked about the meeting last week with the State.

Ilsa Wilson indicated that she was a board member of the Residential Advisory Committee at the Department of Health. She said that meeting addressed grandchildren in child care.

Mayor Stevenson said on an average day, during the school year, were children coming after school. What caused the desire to move to 16 children?

Dawn Nielson explained her situation and hiring an outside employee not knowing that she couldn't do that. An outside employee allowed her time to deal with personal appointments during the day. Ms. Nielson said she thought she was licensed at the higher State level of 16 children.

Mayor Stevenson asked if they thought that cities should allow for home daycares to be able to hire an

outside person.

Ms. Wilson said through a conditional use permit, she was a licensed daycare in Sandy and was licensed for 16 children and one employee. She indicated that she was required to have two direct exits from her home, and there was a cap of 24 car stops per day allowed at her home.

Mayor Stevenson said he was all for business but he was for keeping neighborhoods as neighborhoods; where did the City draw the line when allowing daycares to hire an outside employee. He said it would be difficult to allow home daycares to have outside employees and stop hair care businesses or a business man with a home office from hiring outside employees.

Ms. Wilson said it was for the safety of the children.

Mr. Pevey said he looked at code from 4 different cities that allowed outside employees. Most were limited to one outside employee.

Mayor Stevenson said he didn't agree with that; there were legal commercial daycare businesses. He said he didn't want to see neighborhoods become commercial businesses. Mayor Stevenson said he couldn't judge what the appropriate number of children was, but he didn't want neighborhoods to become commercial areas. There were commercial areas available.

Ms. Pevey said there was no other way to do what they did other than in their home. It was different in a home than a commercial building. Customers wanted their children in a home environment.

Mayor Stevenson asked Kent if there were preschools run out of homes in Layton.

Kent said yes; they were allowed 12 children. They were limited to children 6 and under, and they were limited to a 4 hour period.

Doug Bitton, Fire Marshal, said preschools had to be certified in an educational field.

There was discussion about the traffic impact of preschools to a neighborhood.

Mayor Stevenson asked Kent, relative to his daughter, was she in a home daycare.

Kent said his daughter when to a Montessori school and they were very happy with the facility. He said there was one care giver per four children.

There was discussion about the ratio of caregivers based on the age of the children.

Ms. Wilson mentioned parental preference; some preferred a home environment.

Mayor Stevenson asked Staff; if he wanted to open a daycare in a commercial area, and he had a building with 6,000 square feet, could he hire enough employees to accommodate 40 children.

Kent said yes; it was based on square footage and the number of providers.

Ms. Nielson said she would love to do that if she had enough money. She said home daycares were cheaper than commercial daycare centers, and relationships were formed.

Mayor Stevenson asked if there was demand for more daycares.

Ms. Pevey said there were always people looking for a good daycare; there was a shortage in Layton City. She said no one had an opening.

Councilmember Day asked about the cost of daycare.

There was discussion about rates.

Mayor Stevenson asked if it was difficult to find openings on the commercial side.

Kent said he was using a school; there was limited infant care.

Councilmember Davis said his number one concern was child safety. He said he had concerns with home occupations and the impact to neighborhoods.

Ms. Nielson said for 9 years she had 15 children in her home and had never had an issue or neighbor complaint.

Mr. Pevey said in 1999 there were 51 licensed providers in the City; now there were 13. He said the number dropped because of very strict State regulations. Mr. Pevey said if there were less than 4 children, they weren't required to be licensed by the State and regulated.

There was discussion about issues with unlicensed daycares having more than 4 children in the home.

Mayor Stevenson asked Staff if there had been any concerns from the fire safety industry relative to the State allowing 16 children.

Chief Ward said State Code did allow for 16 children, but it was clearly left up to the local jurisdiction to determine the appropriate number in the jurisdiction. He said the State Chief Deputy Fire Marshal felt that the number was too high.

There was discussion about the history of State regulations.

Alex said it was clear that there was a natural creep. If the numbers were increased, the natural push would be that the numbers would increase. He said the daycare providers here this evening were some of the best, but even they had been violating the City's law. Alex said these daycares had never been approved for 15 or 16 children in the City. The policy, since 1998, and which these daycare providers had been involved in, had been 12 children. They knew that 12 was the limit, and even the very best providers had violated the City's ordinance under the argument that they were confused because the State Code said 16 and the City's ordinance said 12. Alex said they knew the City's ordinance allowed for 12 and yet they had migrated to 16. He said in his opinion the City didn't have the ability, nor should it, to regulate to the highest common denominator nor to the lowest common denominator. The City had to look at all the facets of the issue and make a reasonable decision, on average, what best provided for the neighborhood welfare and for the health, safety and welfare of the community and individual citizens.

Alex said generally, cities didn't cater to either extreme. He said the City recognized that in any business, some people did it extremely well and unfortunately on the other end there were people that did it very poorly. Alex said the City had nothing against these good folks; Staff was simply trying to balance all of these factors and make a decision based on that.

Ms. Nielson said she did not know that that was what was meant.

Alex said that was her responsibility as a business owner; it wasn't the City's responsibility. He said as a professional, as he thought Ms. Nielson was, it was her responsibility to be familiar with the requirements of her licensure.

Ms. Nielson said she did not knowingly violate the local ordinance. She thought the City's ordinance meant that she could not have more than 12 children six and under; that was how she interpreted the ordinance.

Ms. Pevey said they had no desire to be in noncompliance with the City or the State.

Alex said if the City's license stated 12 children, respectfully, how did they think they could go above that.

Ms. Pevey said on their business license it stated that it was limited to residents of the home only and 12 children six years and under, with no more than 3 under two years including their own. It also stated no objectionable traffic or parking. She said they felt that they were abiding by the City and State requirements. Ms. Pevey said they only had 12 children six and under, and they had school age children before and after school.

Ms. Nielson said she thought for many years that her license was for 15 children. She was in a meeting with other daycare providers that indicated that they were licensed for 16 children and that was why she started the process to have hers increased to 16. Ms. Nielson said if she had known that she was violating the City's ordinance, she wouldn't have started that process.

Shannon Hansen, Code Enforcement Officer, said based on her conversation with Ms. Nielson, she became aware that the language on the business license was significantly abbreviated prior to her tenure over business licensing. She said she completely understood the confusion based on that abbreviated description of the limitations of children and how it was worded on the business license. Shannon said the way it read, regardless of the intent, was misleading. However, the ordinance clearly stated 12 children.

Mayor Stevenson said realistically what they wanted was for the Council to change the ordinance. Realistically someone from the City would have to want to do that.

Mr. Pevey said even if it was a staggered ordinance, with 12 children under six years of age, and allow them to have some flexibility to have up to 16 children. He expressed concerns with receiving a fine from the State if the State was doing a spot inspection and he happened to have 13 children at one time. Mr. Pevey said it would make a huge difference to them and their clients to have some flexibility.

Mayor Stevenson asked if any of the Council was interested in additional research and possibly making changes to the ordinance.

Councilmember Day said he could see their point on the last thing they were talking about of the 12 under six and an additional 4, but he didn't know if it was worthy of changing the ordinance. He said he could see where the confusion came from, but other than that he would want the ordinance to stay the way it was.

Councilmember Freitag said he understood their point relative to the confusion on the license; he didn't know enough about the application process or any other rules or details that would be available to the applicant and the City to help explain that.

Councilmember Day said maybe something needed to be done at the State level to avoid the confusion; possibly dropping their license to 12 children.

Kevin said he had that conversation with the Chief Deputy Fire Marshal today. They felt that it should be controlled at a local level.

Councilmember Davis said it seemed that the State was mostly looking at child safety issues; cities had to consider home occupation issues. He could see the State having a different standard than the City because their criterion was somewhat different. Councilmember Davis said it was potentially a little confusing. He said you might get some pushback from some cities that were at 16. Councilmember Davis said part of the concern he had was that the Council had heard from the providers, but they hadn't heard from the neighbors. He said he would assume there would be a public hearing if this moved further along. Councilmember Davis said he was concerned about the precedent for home based businesses, particularly adding employees that were not family members.

Doug Bitton said he had been in the fire safety business for over 20 years and had inspected several daycares. His biggest concern was fire hazards relative to synthetic materials that are often in a home environment, which caused thick, rich, dense black smoke that occurred very quickly even with proper notification by smoke alarms. Doug said getting 12 children or 16 children out of a home safely, along with the providers, was very difficult.

Mr. Pevey explained monthly fire drills they held; older children were a great help. He said having staggered amounts of children and older siblings made his fire drills faster and safer. Mr. Pevey said their smoke alarms went through the Fire Department monitoring system.

Mayor Stevenson said everyone was making good points. He said these caregivers were probably the perfect example of the way the City wished everybody was. However, when the City developed an ordinance, they had to base it on everyone, not just the very best. Mayor Stevenson said he didn't hear a lot of support from the Council to make changes to the ordinance, other than some flexibility within the ordinance. He said he didn't think the City would pursue a change to the ordinance. Mayor Stevenson said he would meet with Staff to see if some adjustments could be made relative to children after school.

Ms. Nielson said she didn't have an opportunity to address all of her points.

Mayor Stevenson said he didn't think it would change the opinion of the Council.

Ms. Nielson asked about being able to have an outside employee.

Mayor Stevenson said he was absolutely against hiring someone to come into the home. If that was opened up for daycare facilities, every other home occupation would want the same consideration. He didn't want to see home occupations continue to escalate.

Ms. Nielson said daycares were different than any other type of home occupation.

Mayor Stevenson said it was different in her mind, but it wasn't going to be different when it was a beautician or anyone else.

Ms. Nielson said this meant that she wasn't able to leave her house and go to a doctor appointment. Other types of businesses could put a note on the door and leave, but she couldn't do that.

Mayor Stevenson said the ordinance had to address all daycares, not an individual situation.

Mr. Pevey said there were exceptions in State code relative to daycares. An exception could be made for daycares only. He said they would like the Council to consider these recommendations.

Mayor Stevenson said the City would look at it and see if there was any desire to make changes. He said there wasn't a lot of support from the Council to make blanket changes to the ordinance.

Ms. Pevey asked what the process was if they were out of compliance with their City license.

Kent said if they were in noncompliance with the City's ordinance, they would receive a notice of noncompliance. He said they would be asked to get into compliance; if there was an additional inspection and they were not in compliance, they would receive a revocation of their business license. This applied to every business in the City.

Ms. Pevey asked what other businesses in the home had such strict State rules and guidelines, and were regulated by the City.

Mayor Stevenson said there probably wasn't any. He said the Council had to look at the City as a whole and determine what was best for the community; it may not be best for these daycare owners individually. Mayor Stevenson thanked everyone for their input.

**The meeting adjourned at 8:26 p.m.**

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Thieda Wellman, City Recorder